

EMS Agency Management Series

*Discipline and Due Process
for the EMS Agency*



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Chapter 1 - Introduction

To: [unknown], dayton
From: INTERNET:xxxxxx@yyy.com
Date: 2/22/2000, 4:37 PM
Re: Question

Dayton:

I have a question for you. Can an employer discipline you for an action that is not outlined in the policy and procedure manual? At my place of employment, our supervisor told us in a meeting that salary disclosure to other employees was against policy and was even grounds for severe discipline or even termination. A few of us attempted to locate this policy in the policy and procedure manual, but were unable to find it.

I next called Human Resources and was told that it, in fact, was not written down as a policy but that disciplinary action could be taken for disclosure in that this was considered "unprofessional conduct."

I was just inquiring about your thoughts on this subject.

This is an actual e-mail received by an attorney. Several similar inquiries are received each month from all parts of the fire and EMS community – volunteer, municipal and commercial providers (hereafter referred to as members) and from chiefs, captains, presidents, etc. (hereafter referred to as management).

The typical answer to a member is that management can pretty much do whatever it wants. There could be some suggestions for management about the clarity of their rules, but ultimately the member will not prevail in this argument.

Not all members present constant disciplinary challenges for management. Most follow both the letter and spirit, or at least the spirit, of the agency's rules and regulations. Discipline is one of the more difficult tasks for management personnel. Members who would have no problem taking command of a plane crash with multiple casualties often cower when it's time to handle a disciplinary problem. We are action oriented, but also dislike interpersonal conflict. Many refuse to fill management positions because discipline is part of the job.

Frequently, persons have been selected or elected to management positions because of their ability to perform other required tasks, not because they are capable of handling disciplinary problems. Others are managers in an agency that has poor or non-existent rules or procedures for dealing with violations of rules.

Many volunteer agencies are experiencing staffing shortages. This should not cause the agency to ignore common sense and reason in recruiting and screening volunteers, nor in disciplining and retaining current members. Not everyone is suited for the job.

This manual is intended to be a resource to both the agency and manager faced with the responsibility of enforcing discipline. No manual is a substitute for individual action – disciplining

members can be stressful and distasteful, but it is a responsibility of management. A rule will not enforce itself.

Nor is any manual a substitute for seeking and obtaining legal advice on specific problems or courses of action. All agencies should have access to legal counsel who can review rules and standard operation procedures, and advise managers on disciplinary issues.

This manual cannot be the sole source for information without outright plagiarism of existing resources. Additional places to obtain information are provided throughout this manual. The inclusion of a particular source of information is not an endorsement, and the exclusion of a source is also not intended as a slight or criticism. Web site addresses, or URLs, were correct at the time of writing, but are always subject to change.

Chapter 2 – The “Law” – Friend or Foe?

Employment law is one of the more volatile areas of the law. Each year there are one or two cases that completely change how lawyers advise clients on employment issues. Multiple federal laws affect the employer-employee relationship, and there are also state laws and agencies that may affect that relationship. It is almost impossible for a lawyer to tell you how a hypothetical case will be decided next year. Not all federal courts agree on the meaning of a particular law. Some issues have not been decided at all. Many cases are decided by what many would call “hairsplitting.” Often intricate fact patterns determine the outcome; but just because your facts are the same as a previous case does not mean that your judge will decide the same way as the previous judge.

No manual of this type can hope to explain the law as it exists today, much less how it may be tomorrow when you find yourself in court. Does the law apply to volunteers? Sometimes, depending on the facts and circumstances. Nobody can be discriminated against or slandered. Do volunteers have a “right” to be a volunteer? Maybe, in some circumstances. Can they sue you if you discipline them? Anyone willing to pay the filing fee can sue – the question is whether or not he or she will prevail. Maybe they will prevail. Even if they do not prevail, the airing of the grievance in public might be bad enough. Do you have to take them back as a member if they win? Maybe.

How does an agency “follow the law” when faced with disciplinary problems when it is so difficult to determine the meaning of the law? All agencies should develop an approach to discipline that is fundamentally fair and that is followed in a consistent manner in all actions of a disciplinary nature. This procedure should be reviewed by legal counsel to ensure that you have not inadvertently violated any existing law, nor afforded your employee or member rights in excess of those you believe you have.

Municipal or other public agencies should note that the human resources policies of that jurisdiction most likely already set forth mandatory disciplinary policy. If so, managers in those agencies should not undertake any policy change without the approval of human resources personnel.

Employers and Employees

Each of us has our own definition of employer and employee. In common terms, one who pays someone to perform some service is an employer and one who performs some task for another for pay and under their direction and control is an employee.

In employment law the definitions vary. For purposes of the Virginia Minimum Wage Act, an employer is any person or firm acting as an employer, and an employee is someone “...employed by an employer...”¹ For purposes of the Virginia Unemployment Compensation law, an employer is defined as any person or firm that has paid more than \$1,500 in wages in any quarter of the current or preceding year, or that has had an employee a portion of the day in each of 20 weeks in the current or preceding year.²

Each law has its own set of definitions. An employer will not always be an employer, and an employee will not always be an employee for all purposes. A volunteer may be an employee under some laws. A volunteer agency may be an employer under some laws.

For purposes of this manual, we will consider three different employer-employee relationships: **municipal**, including state, county, city and town; **commercial**, including commercial ambulance services and private hospitals; and **volunteer**.

Municipal relationships involve the state government, or the government of any political subdivision of the Commonwealth, including some authorities and commissions established pursuant to law, i.e., a water and sewer authority, ambulance authority or housing authority. It is important to remember that in a municipal relationship the government's personnel policies are established for all employees of like classification. At some point, most employees may only be terminated for cause. There are typically detailed disciplinary procedures and grievance procedures that must be followed. These procedures will not be identical for all employers.

Every other relationship in which a person is paid to perform a service is **commercial**. Under Virginia's *Employment-at-will* Doctrine, in a non-governmental employment relationship where there is no fixed term of employment any person may be terminated for any reason or no reason at all. This means that the employee has no expectation of continued employment. (The few exceptions will be discussed later.) If let go the employee generally cannot complain. If the employee quits, the employer generally cannot complain. There may be an issue over entitlement to unemployment benefits, but not over the termination of the relationship. The Virginia courts and legislature have jealously protected the *Employment-at-will* Doctrine and have been narrowing the exceptions over the last several years.

Service provided for "(1) a civic, charitable, or humanitarian reason; and (2) [in] the absence of an expectation of, or actual compensation for services rendered" is **volunteer** service.³ Receipt of public funds does not necessarily make the volunteer agency an employer. Receipt of some membership benefits does not necessarily make the volunteer an employee. The line is not always clear, and, again, the person may be considered an employee for some purposes and not for others. Volunteers would be considered *at-will* employees, if employees at all, unless one of the exceptions to the doctrine can be found.

Exceptions to the *Employment-at-will* Doctrine for Commercial Employers and Volunteer Agencies

Most commercial employers and volunteer agencies want their employees and members to be *at-will*. They are familiar with horror stories from governmental employers and/or employers with collective bargaining agreements. Some employees have committed egregious acts, been fired, have tied up the employer in a burdensome grievance process, and then been reinstated by a grievance panel. They do not want this to happen to them.

The two primary methods that an employee gains an expectation of continued employment are employment contracts and collective bargaining agreements. The latter are not very prevalent in EMS or fire in Virginia, but, if present, govern the employer-employee relationship.

Employment contracts that set out an employment period for a specific time (i.e., a year, five years, etc.) are also infrequently seen in EMS or fire in Virginia. But, it is not necessary to have a specific document in contract form. Representations contained in welcome letters or employee handbooks may provide sufficient language to allow the employee to claim that he or she is not *at-will*. In at least one case, the court found that a personnel manual that listed specific offenses,

specific discipline and a grievance procedure created a contract (although the termination was upheld on other grounds).⁴

Volunteer organizations must also carefully review their Articles of Incorporation, by-laws, and Standard Operating Procedures to be sure that there is no language that implies that the person may continue to be a member unless and until they are terminated for cause (for doing something wrong).

Many commercial employers and volunteer agencies have a provision for a probationary period. In government, this period is the period in which the employee may be terminated without cause, and if they continue to be employed after that period they gain a right to be terminated only for cause. One may have a probationary period and also have an *at-will* employee or member thereafter, but the probationary period provision should be carefully examined to be sure that the language is clear. Remember that many persons work or have worked in other places where they have gained rights after a probationary period. They may assume that to be the case with their new employer or volunteer agency.

Virginia courts have created, and then (along with the legislature) continually narrowed, exceptions based on public policy. In other words, there are a certain few things that are deemed so important to the public at large that the courts have said prevent an *at-will* employee from being terminated. An *at-will* employee who refused to commit adultery claimed she was terminated for her refusal. The Virginia Supreme Court ruled that public policy prohibited the employer from forcing their employees to commit a crime under threat of discharge.⁵ Subsequently, in April of 2000, the U.S. District Court for the Eastern District of Virginia reached a similar result in the case of an employee who claimed to have been fired because he would not falsify resumes to be submitted with a bid on a government contract (also a crime in Virginia).⁶ The courts continue to refer to the public policy exception as “narrow” and several other cases in which an employee has tried to rely on other criminal statutes have not been successful.

In summary, the courts are hostile to attacks on the *at-will* doctrine, but an employer can find that their own handbooks and policies have given the employee rights that the employee otherwise might not have.

Selected Law Affecting Employment

Courts recognize certain legal rights of employees arising out of the United States Constitution and federal statutes, as well as the Virginia Constitution and state statutes. The major federal rights include the following:

Due Process Rights

Under Amendment Five to the Constitution “[n]o person shall...be deprived of life, liberty, or property, without due process of law...” This has been held to be a limitation on federal government action, not the actions of private persons. Amendment Fourteen prohibits the same deprivation by state governments. From these amendments a person’s due process rights are said to arise, and those rights are both substantive (right to be free from arbitrary government action) and procedural (right to notice and an opportunity to be heard). The Virginia Constitution has a similar provision.

No particular process is required. Action may be taken against a person, pending the opportunity to be heard in most cases (in employment cases an employee is usually paid pending that hearing). Notice of the charges is provided. The employee is given the opportunity to address the charges against them.

In Virginia, emergency medical technicians and firefighters who are employed by a public safety agency of the state, political subdivision or authority are given certain rights. They must be provided written notice of the nature of allegations against them prior to interrogation, and the time and method of interrogation is limited. However, there is no real remedy provided for an employer's failure to abide by the statute.⁷

Protected Liberty Interests

The right to liberty has been defined as the right to be free from governmental physical restraint as well as "...to contract, to engage in any of common occupations of life, to acquire useful knowledge, to marry, establish a home, bring up children, to worship God according to dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to orderly pursuit of happiness by free men."⁸

In employment contexts, it applies to a governmental (municipal) employee. That employee has a protected interest that they not be discharged from public employment (without notice and an opportunity to refute the charges) if the employer also makes public, false charges attacking the employee's reputation, honor or integrity, or takes some action to bar the employee from future employment.

Protected Property Interests

The right to continued employment may be a protected property interest. Most municipal employees (except probationary employees) have such an interest. Probationary employees have no protected property interest in their jobs. In Virginia, *at-will* employees have no protected property interest.

An employee of a commercial service would not have an interest protected by the U.S. or Virginia constitution, as they are not a governmental employee and would normally be an at-will employee anyway. Even if not an at-will employee, their claim would be for breach of their employment contract, not for due process violation.

Does a volunteer have a protected property interest in their membership? If considered an "employee" at all they should be *at-will*. A volunteer with a non-governmental agency would have to prove that the agency was acting 'under color of law' (See Section 1983 below) and that the volunteer received significant 'compensation' (whether by direct payments or other significant non-monetary benefits) before a Constitutional liberty or property interest might be found. There may be cases where that may be proved. It is clearly easier to conduct business in a manner that affords the member due process even if not legally required. An attorney evaluating a potential case that sees that there was notice and opportunity to be heard prior to action may be less likely to sue.

Civil Rights Statutes

Civil Rights Act of 1866 ("Section 1981 action") – Grants to all persons (1) the same rights "...enjoyed by white citizens..." to make and enforce contracts and (2) to the "full and equal benefit of all the laws..." This has been interpreted to prohibit intentional discrimination on the basis of race. In 1991 the section was expanded to protect against "...nongovernmental discrimination and

impairment under state law.” 42 USC § 1981. In other words, neither municipal nor commercial employers may discriminate on the basis of race in their hiring, promotion, discipline, layoff, termination or any other facet of the employment relationship. This section has been interpreted to allow claims by African-Americans, Arabs, a white woman married to an Iranian man whose employer didn’t consider white, a white person who alleged he was discriminated against because of his race, and persons in inter-racial marriages.

There has been no case after the 1991 amendments concerning volunteer rescue squads. A 1983 case from the U.S. District Court for the Eastern District of Virginia held that termination of an African-American volunteer rescue squad member’s membership involved no contract right and there was no §1981 action for private discrimination. The court also found that the “full and equal benefit” part of the law required action by the state against the person before a §1981 action may be maintained. In that case the court held that the volunteer rescue squad was not a state actor.⁹ These are complex cases and I would be afraid to speculate on the outcome of a similar case today.

“Section 1983” Actions – Prohibit “...deprivation of any rights, privileges, or immunities secured by the Constitution and laws...” under “color of law.” One court has viewed the purpose of this section as to deter state actors from using the badge of their authority to deprive a person of their federal rights.¹⁰ If a person’s rights are violated, this section is the one that gives them the right to sue for that deprivation. Typical suits seen in Section 1983 actions are excessive force by police officers, racial discrimination, equal protection and due process violations. Both the federal government and state governments are covered. The acts of a private entity may be considered state action in some circumstances, i.e.: when the business of the private entity is so intertwined that the business of one may fairly be said to be the business of the other (usually limited to leasing and profit sharing), or when the private entity is performing a traditionally public function. Fire protection has been held to be a traditionally public function, but so far in Virginia “[r]escue squads are more akin to private functions that the State may just be beginning to assume than to public functions that are traditionally governmental.”¹¹ In a July 12, 2000, decision, the United States Court of Appeals for the Fourth Circuit (which includes Virginia) used a “totality of circumstances” test to determine whether a volunteer fire department’s action was ‘state action’ (see the Goldstein case).

“Section 1985” Actions – Prohibits conspiracy to deprive person of equal protection of the law, or equal privileges or immunities. Only intentional racial or class-based discrimination is covered.

Employment Discrimination Statutes

Title VII – Applies to all employers with 15 or more employees. Prohibits employment discrimination on the basis of race, color, religion, sex or national origin. Sexual discrimination and sexual harassment claims are covered by Title VII, as is retaliation for exercising rights under the statute. The complaining party has a right to a jury trial and prevailing employees are entitled to attorney’s fees. A volunteer who receives significant benefits may be found to be an employee under Title VII (see the Haavistola case).

More details on EMS and fire law may be found in:

Legal Aspects of Emergency Medical Services, by Bruce M. Cohn and Alan J. Azzara, available from Harcourt Health Sciences, 1-800-545-2522.

Legal Aspects of the Fire Service, by Lawrence J. Hogan, available from Amlex, Inc., P.O. Box 3495, Frederick, Maryland 21705-3495, (301)694-8821

Fire Service Personnel Management, by Stephen T. Edwards, available from Brady, 1-800-638-0220.

Taking the High Road: A Guide to Legal and Effective Employment Practices for Nonprofits, from the Nonprofit Risk Management Center, 1001 Connecticut Ave., NW, Washington, DC 20036, 202-785-3891, www.nonprofitrisk.com/

SUMMARY

Employment law is complex, confusing and continually changing. Management wants to know exactly what rights the employee has.

Municipal employees at some point have a property interest in continued employment – they may be terminated only for cause. Municipal employers must afford some due process prior to dismissal, demotion or suspension of permanent employees for punitive reasons. In some cases, the post-termination process may be sufficient to meet due process requirements.

Commercial employers and volunteer agencies are not legally required to provide any due process. If they have (by contract or in an employee handbook) given some rights to their employees, they may be in breach of contract if they do not comply with those provisions.

Commercial and volunteer agencies may find themselves liable for discrimination against a member of a protected class under Section 1983 or under Title VII. For a volunteer agency to be liable under Section 1983 it must be shown that it can be considered a state actor – in other words, to show that there is a degree of government participation so that the acts of the private organization may fairly be said to be the acts of the government itself (see the Goldstein case). For a volunteer agency to be liable under Title VII, the volunteer must be deemed an employee for purposes of that statute – he or she must receive significant monetary or non-monetary benefits. (see the Haavistola case). For a court to decide if the volunteer agency is subject to Section 1983 or Title VII requires the production of evidence by both sides. This can be lengthy, intrusive, burdensome and expensive. It is easier and cheaper to treat your members fairly than to try to prove you are not subject to the law.

¹ Code of Virginia § 40.1-28.9.

² Code of Virginia § 60.2-210.

³ Benschoff v. City of Virginia Beach, 9 F.Supp.2d 610 (E.D. Va. 1998).

⁴ Bradley v. Colonial Mental Health and Retardation Board, 856 F.2d 703 (4th Cir. 1988).

⁵ Mitchem v. Counts, 523 S.E.2d 246 (2000).

⁶ Anderson v. ITT Industries, No. 99-818-A (E.D. Va. Apr. 18, 2000) (motion to dismiss denied).

⁷ Code of Virginia § 2.1-116.9:1, *et seq*

⁸ Meyer v. Nebraska, 262 U.S. 390 (1923).

⁹ Eggleston v. Prince Edward Volunteer Rescue Squad, 569 F.Supp. 1344 (E.D. Va. 1983).

¹⁰ Richardson v. McKnight, 521 U.S. 399 (1997).

¹¹ Eggleston, *supra* note 9.

Chapter 3 – Avoiding Disciplinary Problems

All agencies, municipal, commercial and volunteer, should conduct a thorough and complete background investigation of all applicants. Public safety agencies seem to be magnets for what can euphemistically be referred to as “interesting” people. The very nature of our missions allows us access to vulnerable people of all ages and sexes, as well as to their property. What kind of person do you want taking care of your unconscious mother and securing her home? Too often we just assume that only good people want to be employees or members.

Some Ways the Agency Could be Liable for the Wrongful Acts of its Members

An agency may be legally responsible for the wrongful acts of its members under several theories.

Negligent Hiring

An agency may be civilly liable for injuries suffered because of the negligent hiring of its employee. To establish a case, an injured person must show:

- the employer failed to exercise reasonable care in selection of the employee
- the employee had a propensity for the kind of conduct which caused the injury
- knowledge of that propensity was reasonably discoverable, and
- the employer failed to inquire prior to hiring, or the employer would not have hired if it had inquired

As early as 1922, the Virginia Supreme Court recognized negligent hiring. A railroad employed a person who got angry and shot at a car and killed a passenger. The employer should have known that there was ample evidence tending to prove that the assailant “was a man who would become highly incensed over a very simple matter and get dangerously angry from slight provocation.” The court commented that the employee had previously worked for them and the employer did not even check on his past record as an employee.¹

In 1988, the court allowed a suit for negligent hiring to go forward that alleged a church hired an employee who was on probation for aggravated sexual assault of a young girl, and that the employee then molested the 10-year-old daughter of a church member.

In a 1999 case, the court disallowed a claim based partially on the employer’s hiring process. The applicant filled out an application that contained a release allowing the employer to inquire “...into his work, credit, and educational history, as may be disclosed through his personal references and public records.” Of six references, the employer was only able to talk to two, both of whom gave good recommendations. The application had a questionnaire that asked him to respond whether he had ever engaged in any of 34 different criminal behaviors, and whether he had been convicted of any of 28 felonies in the last seven years. He was given some sort of behavioral test graded by a third party. The court found the victim’s claim for negligent hiring “wholly insufficient.”²

Negligent Supervision

Claims that the employer failed to adequately supervise its employees have not been recognized in Virginia. However, such claims are similar to claims for negligent retention.

Negligent Retention

Even though employers have exercised care in hiring, they still have a duty to act when they gain actual or constructive notice that an employee has become unfit. One court ruled that if an employer had gained actual or constructive knowledge that the employee had a propensity to sexually harass female employees, and the employee did so, the victim could sue for negligent retention.³

The Application and Hiring Process

Each agency should have an application that requests certain basic information that will allow agency members to evaluate the applicant's fitness for the position, whether paid or unpaid. There are questions that you may not ask – disability information, race, sex, marital status and similar information that might be used to determine information that has previously been used by employers to discriminate against applicants for employment.

Employment history and references should be sought. An integral part of the application should be a release allowing the agency to confirm the information and talk to the references. Many past employers, and even references, will not speak to you without some proof that the applicant has given permission for them to do so. Part of the release should be an acknowledgment that inaccurate or false information is grounds to deny employment or membership or to terminate employment or membership whenever discovered.

When reviewing applications, look for “red-flags” that *may* indicate a problem, such as:

- Incomplete applications (this should immediately disqualify the applicant from consideration, but amazingly it does not always)
- Gaps in employment history – may indicate fired and unable to obtain employment, incarceration, deliberate omission of an employer, falsification of employment dates
- Employment for brief periods of time – may indicate a problem employee who is repeatedly terminated during the probationary period or just stops showing up for work
- For volunteer agencies:
 - someone who is not employed
 - someone whose only references are current members
 - person wanting to volunteer at an agency that is not in his or her home jurisdiction (may indicate someone that is a problem and can't become a member at home, or someone who has been terminated from the home organization and has omitted it from the application)
 - previous volunteer service at many different rescue and/or fire agencies in the area

The presence of a red flag does not mean that the person will not make a good member.

To help design an application for your organization, you can obtain specimen copies from the following:

- Virginia Employment Commission (Virginia Application for Employment Form 10-012 can be downloaded from the Virginia State Police Web site at <http://www.vsp.state.va.us/vsp.html> under “State Application”
- Any restaurant
- Any commercial business (i.e., convenience store)
- Some software packages
- Your local government

Background Investigation

Note – An agency may decide to conduct all pre-employment testing (written and physical agility) and background investigation before extending an offer of employment, conditioning the offer on successful completion of a polygraph examination, medical screening, drug test, etc. Others may delay a thorough background investigation and drug testing until after a conditional offer of employment has been made because of the time and expense involved. If you have questions about whether your process complies with the Americans with Disabilities Act you should consult legal counsel.

Once you have the application in hand, the information should be examined and confirmed. Must you confirm everything on the application? Probably not – but if you do nothing you have no defense to a negligent hiring claim. If you check some information and find it is inaccurate, then you should check everything.

Prior employers may decline to give any information about a former employee because they are afraid that the person will sue them if they are not hired. Some will only confirm that they worked there during a certain time period; some will tell you whether they would rehire the person. Recognizing that prospective employers have a legitimate interest in obtaining information about prospective employees, the Virginia legislature passed a statute that is effective July 1, 2000. It grants immunity to former employers who are contacted for information and provide that information in good faith. In fact, it is presumed that the information is provided in good faith and the applicant must prove by clear and convincing evidence that the former employer provided false information or provided information with reckless disregard for whether it is true or false.

The grant of immunity clearly applies to municipal and commercial employers (both those asking for and those providing information). It appears that it also applies to volunteer agencies seeking information on their applicants, or providing information to prospective employers of current or former members.⁴

When contacting references it is helpful to have copies of both the release on the application and of the new statute. Some people will want to have a copy of the release of information before they talk with you.

Consider asking to see the original certification cards or certificates. With the advent of scanners and personal computers, some persons have falsified realistic looking certification documents. You may purchase a quarterly printout from the Office of EMS that shows training for those persons who list your agency on their application/answer sheets. You get accurate information and it helps keep track of certifications. (One benefit to receiving these reports is that you can place the report in the personnel file. This keeps you from having to track everyone down at re-certification time to get a copy of his or her new card.)

Criminal History

Can you obtain information about the applicant's criminal conviction history? Yes, in several ways. There are two different sets of records that you can check. The first is a criminal history record from the Virginia Central Criminal Records Exchange (CCRE) that shows Virginia criminal history only. Out-of-state criminal history is not maintained by CCRE.

Municipal agencies may obtain information for investigating applicants for public employment whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment.⁵

Commercial agencies may obtain that information by having the applicant request it (on a Form SP-167) and then provide it to the agency. Volunteer agencies may obtain information by filing Form SP-230. The fee is waived for applicants to volunteer fire companies or rescue squads.⁶

The second available record is a search of the “Sex Offender and Crimes Against Minors Registry” that can be obtained by filing Form SP-266 or SP-230. This information may include out-of-state conviction information *if* the person has registered with the Virginia registry. Information on *violent* sex offenders is available on the Internet. The Internet search will not discover *non-violent* sex offenders; you must file a Form SP-266 or SP-230 to discover information on non-violent sex offenders. There is a fee for all Registry search requests.

Forms SP-167, SP-230 and SP-266 may be downloaded at <http://www.vsp.state.va.us/vsp.html> under “Criminal Record Check”. Be sure to follow the directions and send the correct number of forms and fees.

The *violent* Sex Offender Search may be accessed from the same Web site.

Effective January 1, 2001, organizations that provide care to children, the elderly or disabled may request, through the Department of State Police, a national criminal history background check for certain specific serious crimes. The Department is developing Regulations necessary to implement this new law. This search may be preferable to the search of the Virginia Sex Offender Registry, as it will allow discovery of a larger number of offenses and covers convictions in all states. It will require fingerprinting by a law enforcement agency and a signed statement by the care provider, and up to a \$36 fee.⁷

Can you exclude persons from employment or membership because of their criminal convictions? Yes, but the crime must have some reasonable relationship to their fitness for the position. There have been previous court decisions that have held that excluding applicants based on convictions in the distant past tends to unfairly impact minority applicants. The Virginia Department of Health’s Rules and Regulations set out criminal convictions that would disqualify applicants for EMS certification.⁸

The Equal Employment Opportunity Commission considers the use of *arrest* records, without proof of business necessity, to be unlawful discrimination. To fire, or not hire, a person in a protected class based on a *conviction*, the employer must show that it considered the following factors in making the decision:

- The nature and seriousness of the offense
- The time period that has elapsed since conviction and/or completion of sentence
- The type of job⁹

Your agency should establish criteria to use in evaluating applicants. Some agencies will exclude applicants with misdemeanor convictions in the three years prior to application. Others vary the time period according to the specific crime. Most will agree that a single shoplifting

conviction in 1970 should not affect an applicant's fitness in 2000. Your legal counsel can help you formulate relevant and legally defensible disqualifiers for your agency. (See Chapter 7 for the City of Virginia Beach Department of EMS membership disqualifiers.)

If membership or employment involves operation of a motor vehicle, you should examine the applicant's driving record. There are two sets of records that may be checked, both of which require the written request of the driver. You may use a Department of Motor Vehicles Form DL 93 to obtain the driver's Virginia record information. You may use a Form DL 56 to check the driver's record at the National Driver Register, which maintains information on suspensions, revocations and serious traffic offenses received from states that report such information. The DL 93 report will reveal more information on a Virginia driver (including some out-of-state convictions), but the DL 56 report will be more likely to show information on persons who have previously been licensed in states other than Virginia.

Forms DL 56 and DL 93 may be downloaded from the Virginia Department of Motor Vehicles Website at www.dmv.state.va.us/ in the forms section.

Polygraph Examination

“In a long line of cases, spanning almost thirty years, [the Supreme Court of Virginia has] made clear that polygraph examinations are so thoroughly unreliable as to be of no proper evidentiary use whether they favor the accused, implicate the accused, or are agreed to by both parties. The point of these cases is that the lie-detector or polygraph has an aura of authority while being wholly unreliable.”¹⁰

The Federal Employee Polygraph Protection Act¹¹ prohibits most polygraph use by employers covered by the Act. The act does not apply to federal, state or local governments. Many public safety employers administer pre-employment polygraph examinations, and use them in internal investigations.

Other employers may be allowed to use a polygraph examination under the limited exception for investigation of theft or embezzlement. There are also exceptions for potential employees who will have direct access to controlled substances, and for investigation of the loss of controlled substances. The results, or refusal to take the test, may not be the only basis for employment decisions.

Virginia law prohibits questions about an applicant's sexual activity unless the activity has resulted in a conviction under Virginia law.¹² This law does not apply to municipal employees. It probably does not apply to volunteer agencies unless they employ others to work for wages, salary or commission.

Polygraph examinations administered in selected circumstances by qualified personnel can be helpful. You should consult legal counsel if you wish to develop such a program to ensure that you are not in violation of any federal or state law.

Standardized Tests and Physical Agility Tests

Most municipal agencies and many commercial and volunteer agencies use some form of pre-employment standardized test and physical agility test. These are permissible so long as they are reasonably related to essential job functions and do not adversely impact any protected class.

Written tests that test current knowledge have been attacked because they adversely impact protected classes that have traditionally not had the opportunity to gain knowledge or experience in certain fields. Many employers now use aptitude tests, which test general ability not specific medical or fire-based knowledge.

Some physical tests have been successfully attacked because they had an adverse impact on women, i.e., they required a certain number of pull-ups that resulted in a large number of women applicants being disqualified. Today's physical tests have been redesigned so they are related to essential job functions in light of both the Americans with Disabilities Act and possible disproportionate impact on protected classes.

If the job requires that you be able to carry a hotel pack up stairs, then a test that requires an applicant to climb five flights of stairs with a hotel pack in a certain time period is likely permissible. Because the essential job functions of the EMT-B have been published and are provided to all EMT-B students, a test that requires an applicant to lift balance and carry 125 pounds (250 with assistance) to the stated height for the stated distance should be acceptable. Additional tests can be designed by using the essential job functions.

If you elect to use an entrance written or physical test be sure the test has been validated for the purpose for which you intend to use it.

SUMMARY

If an agency hires, or retains, a member who they know or should know presents a danger to the public, that agency may be liable for damages if that member injures someone. Each agency should develop and follow an application process that would reasonably be expected to discover problem applicants. An application process might include physical agility testing; knowledge testing; criminal and sex offender history checks; driver's license check; and reference checks.

A written test for those entering health occupations (The HOBET – Health Occupations Basic Entrance Test) is available from Educational Resources, Inc., 8910 West 62d Terrace, Shawnee Mission, Kansas 66202.

For suggestions on effective interviewing of applicants see:

Hiring Top-Notch Employees: Unmasking the Best Applicant, by Gail Hallas, PhD, contained in *Prehospital Care Administration: Issues, Readings, Cases*, by Joseph J. Fitch, PhD, available from Mosby-Year Book, Inc. 11830 Westline Industrial Drive, St. Louis, MO 63146-3318, 1-800-325-4177

¹ Davis v. Merrill, 133 Va. 69, 112 S.E. 628 (1922).

² Southeast Apartments Management v. Jackman, 257 Va. 256, 513 S.E.2d 395 (1999).

³ Berry v. Scott & Stringfellow, Law No. 97-3589, March 27, 1998 (Cir. Ct. City of Norfolk).

⁴ Code of Virginia § 8.01-46.1.

⁵ Code of Virginia § 19.2-389(7).

⁶ Code of Virginia § 19.2-389(11).

⁷ Code of Virginia § 19.2-392.02. Providers that have, seek to have or may have unsupervised access to a child or an elderly or disabled person may have their criminal history checked under this statute.

⁸ 12 VAC 5-30-270.

⁹ EEOC Policy Statement on the Issue of Conviction Records, Feb. 27, 1987.

¹⁰ Bennet v. Commonwealth, 29 Va. App. 261, 511 S.E.2d 439 (1999), citing Robinson v. Commonwealth, 231 Va. 142, 155-56, 341 S.E.2d 159, 167 (1986).

¹¹ 29 U.S.C.S § 2001 (Law. Co-op. 1998).

¹² Code of Virginia § 40.1-51.4:3.

Sample Volunteer Application Process

☐ **Application is complete**

If not complete, return to applicant with instructions to complete and resubmit

☐ Confirmed by _____ date _____

☐ **Physical Agility Testing**

☐ Confirmed by _____ date _____

If unsatisfactory, applicant advised reapplication necessary

☐ **Knowledge Testing**

☐ Confirmed by _____ date _____

If unsatisfactory, applicant advised reapplication necessary

☐ **Certification confirmed** with OEMS or Regional Council

☐ Confirmed by _____ date _____

☐ **Provider Record** checked with OEMS

☐ Confirmed 'no record' by _____ date _____

☐ **Criminal History / Sex Offender Registry Check**

☐ Requests sent on _____ by _____

☐ Confirmed 'no record' on _____

☐ **Virginia Driver's Record and/or National Driver Register File Check**

☐ Requests sent on _____ by _____

☐ Record received on _____

☐ Conviction record reviewed on _____ by Membership Committee

☐ **Check of Personal References**

☐ _____ (name) contacted on _____
by _____ satisfactory

☐ _____ (name) contacted on _____
by _____ satisfactory

☐ _____ (name) contacted on _____
by _____ satisfactory

☐ **Medical History / Medical Examination**

☐ Satisfactory on _____

Chapter 4 – Rules and the New Member

Each new member should be made aware of all the rules and regulations they are expected to comply with and all performance standards that they are expected to meet. All of these should be in writing. In fact, the Virginia Department of Health Rules and Regulations Governing Emergency Medical Services state:

...

Operation Policies and Procedures - The EMS agency shall have written operational policies and procedures which shall be subject to and available for inspection by the Department and which provide procedures for:

1. The operation and maintenance of the services provided by the EMS agency including equipment and facilities;

2. The responsibilities of personnel associated with the agency as limited by the licensure level of the agency. ¹

...

Should it be called a “rule,” “regulation,” “policy,” “standard operating *procedure*,” or “standard operating *guideline*?” Some believe that if called a “standard operating procedure” compliance is mandatory at all times, but if called a “standard operating guideline” compliance is left up to the discretion of the member. Management is afraid that merely calling something a standard operating *procedure* will result in civil liability if members don’t follow it to the letter.

The title alone is less important than the content. When a rule says “shall” it is mandatory; when it says “should” then it is directive and there may be some room for flexibility. Be careful how many “shall” rules you have, because you will be expected to strictly enforce them.

There is a need for some flexibility – it is impossible to write a rule for every possible situation. The exercise of some discretion in the performance of the job provides the basis of some EMS provider’s sovereign immunity. (In *Wesley v. Mercy Ambulance Corp. of Greater Richmond*, the Richmond Circuit Court held that Mercy Ambulance, the contractor selected by Richmond Ambulance Authority, was entitled to sovereign immunity.²)

Flexibility in a rule need not make it unenforceable. Thom Dick and Baystar Medical developed and instituted *STAR CARE* guidelines, setting forth the core values of their service. If their personnel can answer each of the following questions in the affirmative, acting outside the “should” rule may be justified:

- Was it **Safe**?
- Was it **Team-based** (in consideration of the first responders, other agencies and other employees)?
- Was it **Attentive** to the human needs of the patient and his or her family members?
- Was it **Respectful** (to the patient, family members, first responders, etc.)?
- Was it **Customer accountable** (can you look the patient in the face)?
- Was it medically **Appropriate**?
- Was it **Reasonable**?
- Was it **Ethical**?

Using these guidelines allows flexibility while ensuring accountability. For example, an ambulance crew transporting a chronic alcoholic who was in no distress took time to arrange to have her dog taken to a kennel because she lived alone and there was nobody to look after the

dog if she was admitted to the hospital. This was outside the norm, but was appropriate under the circumstances.

No matter what you elect to call your rules it is important that your rules are clear, address expected behavior and are not left open to interpretation. Poor rules include those that are unwritten, are unclear, try to address attitude, try to address every possible eventuality, and are open to interpretation so as to invite selective enforcement.

Many agencies operate with old and outdated rules, or rules that have been changed frequently over many years, or even rules that are not enforced at all because they no longer fit the agency mission. Now is a good time to pull out the rules and review them with a critical eye.

Do you need all those rules? Do you understand what each rule requires or prohibits? Do your employees/members comply with the rule? Do you enforce the rule? Do you have rules that address all necessary topics?

For commercial or volunteer agencies, some areas that should always be addressed in your rules are:

- Reaffirmation that employment/membership is *at-will* and either party may terminate the relationship at any time
- Statement that the Standard Operating Procedures (SOP's) or Standard Operating Guidelines (SOG's) do not create a contract of employment or membership

All agencies should address:

- Sexual and other harassment
- Equal opportunity/nondiscrimination
- Family and medical leave
- COBRA/Healthcare continuation
- Workplace violence
- E-mail/Internet use/telephone privacy/right to monitor
- Process for one accused of a serious violation or charged with a crime (both at the time of the accusation or charge and after)
- That the SOP's/SOG's supersede all prior written or oral rules
- That the agency reserves the right to change any SOP/SOG at any time without prior notice
- How changes will be made and how changes will be communicated to employees/members
- Acknowledgment of receipt of rules by employee

If you have examined your rules and find problem areas that need to be addressed, how should you approach the task? A team approach helps foster buy-in from the members. Assign or ask for volunteers to serve on a committee to review current rules and suggest changes. It's helpful to review the rules of other agencies. Several software packages are available to help you write policies. These programs have policies that you can modify to suit your needs. Reviewing others policies will suggest helpful terminology changes as well as topic areas that you have missed.

Once draft changes have been finalized, all stakeholders should be allowed to give feedback on the changes. You may only receive a handful of comments but at least everyone had

the opportunity for input. The committee should review the comments and make changes if appropriate. Legal counsel should review your draft policies.

The Commission on Accreditation of Ambulance Services' standards requires that legal counsel has reviewed the policies, and that there be employee access to policies and procedures. To obtain the most recent standards contact CAAS, 1926 Waukegan Rd. Suite 1, Glenview, IL 60025-1770, 847-657-6828, or on the Web at www.caas.org.

An effective date for the rules should be selected and copies of the rules distributed to all members. Between distribution and the effective date you should conduct training on the new rules. After implementation, you should periodically review the effectiveness of the rules and make adjustments as needed.

Resist the urge to write another rule every time something happens that you don't like. It may seem easier to write a rule that punishes everyone rather than to deal with a problem member, but you will soon find that you have a thousand little rules that cannot be understood or obeyed.

One last caution: *do not have unwritten rules*.

SUMMARY

The Virginia Department of Health Rules and Regulations require that each agency have written operational policies and procedures. These policies and procedures must address expectations of behavior and performance and must be reviewed and updated regularly. Each member must be provided, acknowledge receipt of, and be trained on the policies and procedures.

¹ 12 VAC 5-30-90.

² Wesley v. Mercy Ambulance Corp. of Greater Richmond, No. LA -501-1, 1995 WL 1056028 (Va. Cir. Ct. 1995) (order sustaining plea of sovereign immunity).

For help with the rule-making process see:

Developing Effective Standard Operating Procedures for Fire and EMS Departments, from the Federal Emergency Management Agency United States Fire Administration, www.usfa.fema.gov, 1-800-238-3358; order on-line at www.usfa.fema.gov/usfapubs

Standard Operating Procedures and Guidelines, by John Lee Cook, Jr., available from Fire Engineering Books and Videos, 1-800-752-9764.

For a full range of volunteer management material see the Points of Light Foundation on-line at www.PointsofLight.org or write them at 1400 I Street, N.W., Washington, D.C. 20005.

Software that helps you to develop policies:

Policies Now, by Knowledge Point
Employee Manual Maker, by JIAN

A resource for sexual harassment, pregnancy and family leave policies is:

Women in the Fire Service, PO Box 5446, Madison, WI 53705, 608-233-4768

Internet sites that contain Standard Operating Procedures:

International Association of Fire Chiefs: www.ichiefs.org (has thousands of SOP's from all types of agencies available in the database section; check the site index, then select "D")

Sacramento County, California: <http://www.co.sacramento.ca.us/ems> (municipal agency with extensive selection)

Charlottesville – Albemarle Rescue Squad: www.carsrescue.org (volunteer agency)

Wheaton Volunteer Rescue Squad: www.wvrs.org/ (volunteer agency)

Northwest Association of Provider EMS Coordinators: www.napec.org/policy.htm

Bloomington Volunteer Fire Department: www.bloomingtonfire.org/sog97.htm

University of Virginia Medical Center: <http://minerva.acc.virginia.edu/~mcorgs/po/cont.htm/> See in particular Policy 701, Employee Rights and Responsibilities.

Chapter 5 - Enforcement

Once you have “hired smart” and developed and trained on your rules, you must be prepared to take steps to enforce them. Unenforced or selectively enforced rules cease to be rules. The goal of enforcement is to correct behavior that is outside the range of acceptable behavior and to protect your agency from claims of negligent retention.

Why would you NOT enforce a rule? Maybe you think the behavior will correct itself. Maybe you think the infraction is too minor to warrant discipline. Maybe you are afraid of a face-to-face confrontation with the person, or afraid of what others might say.

Problems not addressed will get worse in that member and will spread to others. True, the infraction may be minor, but are you willing for every member to be in violation? If not, you must take action.

“Progressive Discipline” is an approach to discipline that seeks to retain those members in which you have expended significant time, effort and expense while altering their behavior so that it is acceptable. For all but the most egregious or dangerous behavior this means a process of first pointing out problems and stating expectations, followed by warnings if the behavior continues, and progressing to suspension and termination as a last result. In other words, the consequences for unacceptable behavior get progressively worse as the behavior continues. A normal progression might start with oral and/or written warnings, then some loss of privilege or transfer, then suspension, and finally termination.

There are times where progressive discipline is not appropriate because of the nature or gravity of the behavior. The agency may want to state examples of behavior that may lead to termination as a first consequence. Some examples include, but are not limited to:

- Assault on a member or public
- Intentional destruction of agency property
- Absent without notice for three days
- Right to practice withdrawn by medical director
- Theft of agency property
- Harassing or threatening behavior
- Failure to maintain certification
- Falsification of application

Counseling

The duty of first line supervisors is to help shape the behavior and performance of those under his or her supervision. This is accomplished by informal counseling during day-to-day interaction. While counseling is not technically considered to be discipline, behavior that is addressed through counseling may later become the basis for discipline.

For example, members’ duties include checking the apparatus oil level. You notice that one new member is failing to do so. You speak to him or her as they are checking the equipment and remind them that they are also supposed to check the oil level. You then follow up to ensure that task is being done. If it is, your counseling was successful. If not, you may need to make further reminders. If these reminders are not successful, then you may have to go further with an oral or written warning to impress the member with the importance of checking the oil.

Since the warning is based on the past counseled behavior, it is desirable to have specific details of the prior counseling, even if you can only state that on May 10, 2000, you spoke to the member about the need to check the oil. This recitation, when it accompanies details of the present failure which is the actual basis for the warning, helps provide a history of the problem should further discipline be required. If this member simply will not check the oil, you may be forced to terminate him or her. Should the employer have to justify the termination later, rather than looking petty, they will be able to show through documentation that the member was given every possible chance to modify his or her behavior.

Documentation of counseling is normally informal. It is perfectly appropriate to maintain brief notes in a pocket calendar or notebook in the event that you need to refresh your memory later. It is acceptable to mail, deliver or e-mail a reminder of the counseling, especially if the behavior is not being modified as quickly as you would like. This documentation is helpful when it is time to evaluate the probationary employee or for annual evaluations.

Because counseling is usually done by the first-line supervisor, that supervisor should maintain copies of any such writings unless your policy and procedure require otherwise. For volunteer agencies, you may want to copy the Membership Committee if it has responsibility for monitoring the member's performance.

Moving from Counseling to Discipline

At some point it will be necessary to go from counseling to discipline. The first-line supervisor may lack the authority to issue warnings, suspensions, transfers or termination. He or she may have to consult with upper management when it becomes apparent that counseling is not working.

It is the upper level manager's responsibility to insure that discipline is indicated, delivered and documented.

To determine if discipline is indicated you first must make sure that you don't have a process problem rather than a person problem – has the problem been caused by your faulty or poorly defined procedures? If so, the answer is to change your procedures, not discipline the person.

When is something a process problem and not a person problem?

1. Members were told to transmit that they were responding to calls as soon as they got into the truck so that the dispatch center would know that the call was covered. On some bays the radio antenna came in close contact with the remote controlled door closer assembly. Sometimes the radio transmission would cause the door to close on the truck as it left the bay. This is a process problem.
2. After installing automatic door closers on the bay doors, the bay doors came down on the trucks as the trucks were being backed into the bays. To help alert the driver that the doors were about to close, flashing strobe lights were installed at the top of the bay door. You could not see the lights if you were watching the mirror to back in. The door came down on a truck. This is a process problem.

Resist the urge to act when angry. Some good members do stupid things. A cool head is absolutely necessary when evaluating potential disciplinary action.

Be consistent. Make sure that you base your decision to discipline on the member's behavior and on prior discipline of others in similar situations.

Further discussion is also based on the assumption that management has satisfied themselves that the unacceptable behavior has in fact occurred. All fact finding has been done.

Delivering the warning might be a three-step process. First, you must satisfy yourself that some violation has occurred. This may require investigation of a complaint and a private meeting with the member to allow him or her to respond. A detailed policy for investigation of incidents can be located at www.co.sacramento.ca.us/ems/4050.htm. If you have never been responsible for investigating an incident you should take a few minutes to read this policy before you start, even though it is from a California agency.

Second, you may need to discuss the incident and your investigation with upper management. This is particularly so if you are not authorized to take disciplinary action. Even if you are, if there is any chance that further disciplinary action will need to be taken, or there is a grievance process, you want to be sure that the agency is prepared to support the planned course of action. You may need to consult with legal counsel.

Third, you must notify the member of the action you are taking on behalf of the agency. Anything other than informal counseling should take place in private. It is advisable to have another management person sit in with you. The decision has been made - this is not a discussion or argument.

Oral or Written Warning

Unless the behavior is serious or dangerous, a warning would be the first level of discipline. Whether oral or written, the basic parts to the warning are:

- A statement of the unacceptable behavior
- A statement of the expected behavior
- A statement of the next consequence if the unacceptable behavior recurs
- A time period for review
- Any explanation or comment offered by the member
- A place for the member to sign, acknowledging that they have been made aware of the contents of the warning

Because the warning is the first level in a progression, you must decide what step you will take if the warning does not correct the behavior. Telling the member the consequence for continued unacceptable behavior is important. Whether or not they suffer that consequence is completely within their control.

The first warning on a minor matter might state the next consequence as "further discipline up to and including termination." Others might state "suspension for one day without pay," or a combination of the two.

Possible consequences for continued unacceptable behavior for volunteers:

Probation
Loss of privileges
Removal from committee membership
Loss of status as preceptor or field training officer
Change of shift, crew, etc.

If you chose to make an oral warning, and your policies allow it, you must still make a written record for the member's personnel file. All the above topics should be included in the record. Because documentation is so important, many agencies permit only written warnings. Having the employee's written comment is desirable as it gives him or her an opportunity to present their side in their own words. It also helps prevent them from raising other issues later.

Your policy may include a provision that a member who accumulates three warnings (unrelated to each other) suffers a certain consequence, i.e., three-day suspension without pay, or 30-day suspension from a volunteer agency. If so, there is usually a provision that warnings drop from the file after a certain period of time, i.e., one year, three years. At some point, the member should be found to have complied with the warning and the warning should not be left pending indefinitely.

Volunteer and commercial agencies whose members are *at-will* may still be placed on probation without destroying the *at-will* relationship, so long as the agency has clearly established that the relationship is *at-will*. Placing an *at-will* member on probation merely sets the conditions for continued *at-will* employment or membership.¹

Suspension, Transfer, Demotion

A municipal employee's rights to due process probably begin when the consequence to their action is suspension, transfer or demotion. You must follow the procedure required by policy.

For the commercial or volunteer agency that has enacted a policy that gives the member certain rights or requires that management follow certain steps, you must follow that policy. If you have no policy, and the member is *at-will*, they are legally entitled to no procedure before suspension, transfer, demotion or even termination.

Termination

Termination is the last step in the progression. Throughout the process the member has been given the expected behavior and the consequences of continuing the behavior. If you have now reached this point it is only because the member has not modified his or her behavior. If you last advised them that they would be terminated if the behavior continued, you now have the responsibility to terminate them.

Appeal

Permanent municipal employees have a protected interest in continued employment and due process is required before adverse employment action. Most municipalities have a grievance

or appeal process in place. Adverse employment action may be appealed. The exact path for the appeal will be governed by personnel policies. The highest level of appeal is often a grievance panel. From there a court may be authorized to review the process and decision on a limited basis.

Commercial or volunteer agencies may provide for a similar process if they wish. An extensive process is not required – a level of review will help ensure the action is not arbitrary and capricious, and will give some assurance of fairness. *At-will* employees are not legally entitled to any process.

¹ Graham v. Central Fidelity Bank, 428 S.E.2d 916 (1993).

Chapter 6 - Case Studies

Caution – By necessity these cases have been simplified and some issues raised in the actual cases have not been discussed at all. The cases from other states all have state law issues that enter into the final decision. The results may or may not be those that would be reached in Virginia.

1. **Municipal Probationary Employee – Termination for Failing Paramedic Training**

The City of Dallas hired Apprentice Fire and Rescue Officers. During the period of their firefighter training the chief issued a memorandum that required successful completion of paramedic training before they would advance out of probationary status, and that probationary status would be extended until class completion if necessary. After successfully completing firefighter training they became Probationary Fire and Rescue Officers (PFRO) with a six-month probationary period.

After having their probationary status extended, two of the PFRO's and several Permanent Employee – Fire and Rescue Officers (PE-FRO) failed the paramedic examination. The PFRO's were terminated but the PE-FRO's were not.

The PFRO's sued on many grounds, including a claim that they were denied due process when they were terminated without due cause and without appeal. The court found that the probationary period had been extended properly and that as probationary employees they had no property interest in their job. They were properly terminated even though other permanent employees suffered less severe punishment.

The court also held that the imposition of the EMS training requirement after hiring but during the probationary period was properly done.

Point(s) to consider – 1) probationary municipal employees have no property rights in continued employment and thus no right to a pre-termination or post-termination hearing; 2) so long as the proper procedures are followed, requirements of probationary personnel may be changed.

Woody v. City of Dallas, 809 F.Supp. 466 (N.D. Tx. 1992).

2. **County employee – Termination for Failing to Re-certify as Paramedic**

Stephen was employed as a firefighter-EMT with a county fire protection district. The district obtained funding to establish a paramedic-training program. He was offered a chance to become a paramedic and agreed to try it out. The training program cost the department about \$6,000. After being a paramedic for a few years, Stephen notified the chief that he would not re-certify. The district board then approved a policy that set shift staffing and prohibited unilateral changes in job classification without the chief's permission.

The chief notified Stephen of the changes and advised him that if his paramedic certification lapsed there would be no position in the department open for him to fill. He let his certification lapse. He was charged with neglect of duty under departmental rules. He was discharged.

Stephen claimed that he was wrongfully fired – when he was hired paramedic certification was not required and one other person had let his certification lapse without permission and was not fired.

The court held that the district was authorized to prescribe the duties of its employees so that the needs of the public are met. After they had done so, Stephen knew that paramedic certification was required in the position he filled. He intentionally let his certification lapse. His termination for cause was upheld.

Point(s) to consider: the employer may adopt requirements in the interest of the safety and welfare of the community, and these requirements may be imposed on existing employees

Jakubek v. Bloomington Fire Protection District, 144 Ill. App. 3d 49, 493 N.E.2d 717 (Ill. App. Ct. 1986).

3. Municipal Employee – Accommodation of Religious Beliefs

Glen's religious beliefs prevented him from sleeping unsupervised in the same room as a female not his wife. Because of certain shift changes it became likely that he would be faced with an assignment that would cause this to happen. He and his wife met with the county administrator to voice their concerns.

The county administrator told him that the county could not make assignments based on gender, nor could they relocate the stations so there were other personnel present, nor could they afford to build separate bedrooms.

The county would allow Glen to swap assignments to avoid being stationed with a female and gave him a telephone list of EMS personnel. They spent \$5,000 installing folding walls between the beds in several stations. They said Glen could sleep in the ambulance or in a pop-up trailer that had been offered for his use. If he could not swap shifts and was scheduled to work with a female, he could request off on annual leave.

On one day Glen's male partner was relieved of duty and a female was assigned to fill in. Glen refused to work with her and was suspended for two days. Glen was then suspended for two more days after making disparaging comments about that female partner. A month later he was placed on sick leave because of stress and was out for about one month. His psychologist released him and he was placed in the dispatch center. He was placed on paid leave, then unpaid leave, and then terminated after being on unpaid leave for one year (it is not clear why he was on leave).

Glen claimed that the county discriminated against him based on his religion by refusing to *guarantee* that he would not be assigned to any of the three substations with a female partner.

The court found that the county had made reasonable efforts to accommodate Glen's religious beliefs. There is no requirement that Glen be absolutely assured that he would not be given an objectionable assignment.

Point(s) to consider: County employees have a right to seek reasonable accommodation for their religious beliefs. However, the county has a right to impose rules for scheduling for all its employees as long as the rules are not directed solely towards any one employee or group of employees.

Miller v. Drennon, 1991 WL 325291 (D. S.C. 1991), *aff'd* 966 F.2d 1443 (4th Cir. 1992).

4. Municipal Employee – Termination for Failing to Follow Hospital Procedure

The New Orleans Department of Health had employed Amy as a paramedic for six years. The hospital had a policy that required that paramedics stop at a triage point for evaluation unless the patient was in cardiac arrest or was critically ill or injured. The Pediatric ER policy stated that all trauma related or trauma suspected pediatric injuries were to be transported to the accident room.

Amy's crew was called to assist a pediatric patient with a large hematoma suffered from striking his head. He had suffered up to seven seizures and was combative. Before they got to the triage nurse, the resident physician in charge of the major emergency room directed they take the patient to the accident room. They passed the triage nurse and told her it was a "seizure, accident room." A physician can override the triage nurse's decision about patient destination. The triage nurse did not say anything to Amy, but filed a complaint.

The Director of Health terminated Amy. She appealed to the Civil Service Commission, which reduced the penalty to a 60-day suspension, saying that although Amy thought she was doing the right thing she must make a more determined effort to follow rules and procedures set forth by the hospital. Evidence that there had been other complaints about her behavior was admitted, although no details could be given. The Department of Health argued that she had impaired the orderly operation of the hospital and should be terminated.

The court found that the city had failed to prove Amy's conduct had impaired the orderly operation of the service and thus could not terminate her; they upheld the 60-day suspension. Physicians disagreed in testimony whether or not *status epilepticus* is a critical illness. Little mention was made of the fact that the physician had directed the crew to take the patient to the accident room.

Point(s) to consider: Discipline doesn't always make sense. A court's review of an administrative panel is often limited to whether or not the panel was "arbitrary and capricious" in making its decision (meaning that there is no evidence to support the decision). As an employer or employee, you usually win or lose in your own administrative process.

Ellins v. Dept. of Health, 519 So.2d 850 (La. Ct. App 1988).

5. Hospital Employee – Termination in Violation of “Whistleblower” Statute

James was the emergency medical services supervisor for a New York hospital. A hospital paramedic ambulance was dispatched to an apartment where paramedics erroneously declared a woman dead. They were sent back 15 minutes later when the police officer saw her move. She was transported and expired in the emergency room. One paramedic told the dispatcher that the second call involved another family member, and his partner destroyed the first run report, making a second one that indicated they had only made one response to the address.

James, over cocktails with the paramedics, learned that the patient had expired but did not inquire further as to how they could have mistaken her for dead or insist upon the correction of the documentation. At 0300 James learned that the police might be filing an unusual occurrence report. The next morning he could not find the paperwork. He then learned that it had been destroyed.

A local news reporter asked senior administrators about the incident. They had not been advised of any incident. James was vague about the details and about when he learned of the incident. The administrators decided he should be terminated for failing to advise his superiors about the incident, inadequate investigation, and change in story, but said they would investigate further.

State Department of Health investigators interviewed James and the paramedics. James also secretly called the chief of operations for New York City EMS and the programs director for the New York Department of Health.

James was terminated. He then claimed that he was fired for providing information to the investigators and/or the programs director. The court held that he had not shown his discharge was because of the information he gave to the investigators, nor that anyone knew about his call to the programs director.

Point(s) to consider: Supervisors also may need to be disciplined. Honesty is the best policy – the paramedics were not fired.

Rodgers v. Lenox Hill Hospital, 674 N.Y.S.2d 670 (N.Y. App. Div. 1998).

6. County Employee – Termination for Poor Performance; Right to Free Speech Claimed

Kimberly was employed as an EMT. From April 21, 1992 to January 28, 1993, she was “informally spoken to, disciplined or reprimanded” by her supervisor in an eight-month period:

- For returning an ambulance at the end of her shift with a nearly empty gas tank (she was advised to fill it or have it filled)
- For telling a newspaper reporter that “she didn’t know people in the county could read” when there was a joint EMS station and public library planned (she was given a report of employee counseling and record verbal warning)

- For complaints from coworkers and the public (a written record signed by Kimberly that said “attitude needed an adjustment – 2nd time employee has been counseled”)
- For smoking at an accident scene (a record of verbal warning, and her probationary period was extended six months, even though she said she was never given a copy of the procedure manual and didn’t know she couldn’t smoke at an accident scene).

On January 28, 1993 Kimberley met a first responder at a gas station. They left in the ambulance to assist another unit. The call was canceled and she went back to the gas station. There she found a truck accident that had spilled hog entrails and blood on the road. A police officer told her that the truck driver said an ambulance caused him to wreck. The officer obtained her driver’s license and insurance company information. She did not report the accident to her superiors because she didn’t know she was supposed to report such things.

Two days later she and her supervisor were at an automobile accident scene where CPR was in progress on a victim. She says she was told later that the supervisor stopped CPR without physician approval, in violation of policy. Kimberly confronted the supervisor and said he got agitated and walked out of the room.

That afternoon the supervisor called Kimberly and asked why she had not reported the accident. He accused her of negligent operation, failing to report the accident and unprofessional conduct, and told her to meet with him and the county coordinator the next day.

At the meeting she was shown a copy of a letter from the police officer who investigated the accident. She asked for the opportunity to obtain an attorney. She was suspended without pay until she delivered a written response to the letter. She filed the response. She asked for a hearing on her suspension, and while awaiting the hearing was fired. Hearings before the Disciplinary Review Board and then a county panel upheld the firing.

Kimberly claimed that she was really fired in retaliation for questioning her supervisor about improper treatment at the fatality accident and not because of her failure to report the accident. She claimed a First Amendment right to free speech.

The court had to decide if the firing was in violation of her First Amendment rights. They held that she had a right to two levels of appeal, and at both they found against her. She produced no evidence that the Disciplinary Review Board or county panel based her termination on her comments to her supervisor. There was no comment on the extension of her probationary status, so perhaps the court found she was a permanent employee.

Point(s) to consider: When you have a probationary employee with this kind of record, get rid of them while they are in their probationary period.

Bland v. Madison County, Florida, 895 F.Supp. 1515 (N.D. Fla. 1995).

7. Municipal Employee – Termination for Poor Care

George was an EMT-1 employed by the City of St. Louis. While he was certified as a paramedic, he was employed as an EMT. On January 27, he was suspended for five days for

having a young girl, who fell off parallel bars and complained of back pain, walk to the ambulance.

On February 16, a police search of his apartment revealed that George had city-owned property stored there without permission.

On February 21, he was fired for refusing to release the results of an eye examination to his superiors after his coworkers complained that he could not see house numbers or street signs. (Apparently his possession of city equipment at his apartment was also a ground for termination.)

George complained that his suspension on January 27 was in error because his partner was not suspended. The Civil Service Commission found that because he was a paramedic and his partner was an EMT there was a logical reason for punishing him more severely.

George then complained that he should not have been fired because he was ordered to take an eye examination, which he did. He was not ordered to release the results to his superiors. The commission held that his literal compliance was not enough to warrant his thwarting of the underlying purpose of the examination, which was to make sure he met required vision standards.

Also considered at the appeal hearing were several other problems George had. He attempted to start an IV on a patient when he was not employed as an EMT-2, and did not have physician authorization (which is required of an EMT-2). The medical director testified that he was resistant to constructive criticism. George admitted personality clashes with other employees. The director of EMS testified that the department had received complaints from the police department and fire department about his attitude, and that once a crowd of people came to the station looking for him because of the way he treated them when their family member had been injured.

George appealed the decision of the Civil Service Commission to the court. The court found that there was adequate evidence to support the suspension and termination.

Point(s) to consider: It would have been better to have disciplined George for all his other problems as they occurred, rather than bring them up to support his termination. Perhaps he would not have been a problem employee for so long.

Jarrett v. Hill, 648 S.W.2d 170 (Mo. Ct. App. 1983).

8. County Employee – Anti-Nepotism Policy Upheld

The county had a policy that prohibited spouses from working in the same county department. Four days before their wedding, two paramedics sued claiming that the policy violated their fundamental right to marry.

The court held that the policy was neutral, had a rational basis, and did not prohibit their marriage, only their working together in the same department. They also claimed that the county selectively enforced the policy because it allowed two women employees who were married to brothers (and were thus sisters-in-law) to keep working. The court said that just

because the county allowed one violation of the policy did not cause a constitutional violation.

Point(s) to consider: Policies to avoid conflict between work-related and family-related obligations, to reduce favoritism, the potential for family conflict, limiting inter-office dating and reducing the likelihood of sexual harassment may be rationally related to governmental interests and permissible.

Waters v. Gaston County, North Carolina, 57 F.3d 422 (4th Cir. 1995).

9. Volunteer Rescue Squad Member – Terminated for Criticizing Squad at Board of Supervisors Meeting

Carl was an African-American volunteer with a rescue squad. John, a white volunteer, used a racial slur in front of Carl and other members. Carl asked the squad's Executive Committee and the general membership to suspend John for six months. The Executive Committee did not vote to do so. The next month Carl appeared before the county Board of Supervisors, advised them of the remark and the squad's inaction, and asked that the county withhold any donation to the squad until John was punished.

The next day the squad membership voted to terminate Carl's membership. Carl brought suit alleging violation of Sections 1981, 1983 and 1985. A pre-trial motion was filed seeking to dismiss all the charges.

With regard to Section 1981, Carl alleged he was deprived of equal protection of the law. The court dismissed this claim on the grounds there was no state action in his termination nor was there any contractual right denied him that was offered to whites.

There were several parts to the Section 1985 claim. One claim was a conspiracy by the members to deprive him of equal protection. The court said that because the members were acting within the authority granted them by the Constitution and By-laws there was no conspiracy. Further, people who wish to exercise free speech do not make up a protected class under the law.

The courts ruling on the Section 1983 claim was more complex. The claim was that the members sought to deprive him of his right to free speech, to petition the government for redress of grievances, to equal protection of the law and to due process of the law. The court held that Carl must show that he was denied a constitutionally secured right and that the squad members acted under color of law.

After detailed analysis, the court held there was no state action under any of the theories advanced by Carl: extensive state regulation (insufficient unless the action could be fairly said to be the action of the state), the performance of a "public function" (emergency transportation held not a traditional government function) or significant government support for the squad (not enough to make state responsible for termination).

Point(s) to consider: Winning might not make you look any better. The court's opinion was not complimentary to the rescue squad.

Eggleston v. Prince Edward Volunteer Rescue Squad, Inc., 569 F.Supp. 1344 (E.D. Va. 1983), *aff'd* 742 F.2d 1448 (4th Cir. 1984).

10. Volunteer Firefighter – Expelled for Criticizing Response to Fire Where Child Died

Lewis was a volunteer firefighter. In December 1993, he appeared before the Borough Council and complained about non-members responding to fires and about the company's response to out-of-town fires.

In January 1994, he wrote a letter to the newspaper criticizing his company's response to an out-of-town fire in which a three-year-old child died.

The company banned him from responding to fires and attending drills. Lewis sued, claiming that he was expelled in violation of his Constitutional right to free speech. The fire company argued that it was not acting under color of law and the suit should be dismissed.

The court held that firefighting is a traditional governmental function and that the company was a "state actor" allowing the suit to go forward.

Point(s) to consider: Firefighting is a traditional public function but emergency medical transport is not.

Eggert v. Tuckerton Volunteer Fire Company, 938 F.Supp. 1230 (D. N.J. 1996).

11. Volunteer Rescue Squad Member – Dismissal

Roy was a member of the Bethesda-Chevy Chase Rescue Squad in Maryland. The squad has volunteer members and also employs some personnel. Roy was dismissed from the squad and sued under Section 1983.

The court held there was no state action by the squad citing the *Eggleston* case (Case No. 9 above).

Point(s) to consider: Although a Maryland case, this case was affirmed by the United States Court of Appeals for the Fourth Circuit. Cases appealed from Virginia federal courts will go to the Fourth Circuit, which will consider all of its prior rulings, including those from other states, in reaching a decision.

Krieger v. Bethesda-Chevy Chase Rescue Squad, 599 F. Supp 770 (D. Md. 1984).

12. Volunteer Firefighter – Sexual Discrimination

Paula was a volunteer firefighter. She complained to the fire company that a male volunteer (Kenneth) sexually assaulted her. The company's board of directors interviewed both parties and decided to suspend both indefinitely. Criminal charges were filed against Kenneth. He was cleared of the charges and reinstated as a volunteer. The company refused to reinstate Paula.

Paula brought suit alleging that the company's refusal to reinstate her constituted discrimination based upon sex under Section 1983 and Title VII. Under Section 1983 she had to prove that there was state action. Under Title VII she had to prove she was an employee.

The trial court dismissed her suit on pre-trial motion finding there was no state action and that she was not an employee.

The case was appealed. The United States Court of Appeals for the Fourth Circuit reversed and remanded the case for trial. Based partly on the Kreiger case, they said that she might prove state action under Section 1983 on the theory that firefighting was traditionally a state function. The court also said that she might prove she was an employee based on the benefits she received as a member of the company, i.e., death benefits, disability benefits, group life insurance, tuition reimbursement for fire and EMS classes, special license plates, etc. Should the benefits be found to be “indirect but significant remuneration” and not just “inconsequential incidents of an otherwise gratuitous relationship” then she would be an employee under Title VII.

After a four-day trial the jury found that the fire company was not a state actor and that Paula was not an employee under Title VII.

Based upon the Goldstein case below, it is likely that if this case were tried today the fire company would be found to be a state actor.

Point(s) to consider: This is also a Maryland case, but the opinion in the initial appeal is binding upon Virginia federal courts.

Haavistola v. Community Fire Company of Rising Sun, Inc., 6 F.3d 211 (4th Cir. 1993); *Haavistola v. Community Fire Company of Rising Sun, Inc.*, 839 F.Supp. 372 (D. Md. 1994).

13. Municipal Employee – Terminated for Abusing Sick Leave

Marlon was employed as a firefighter/medic from 1985 to 1994. In May 1993, he was involved in an accident while driving city owned apparatus. He received a reprimand that was upheld by a civilian grievance panel.

After his grievance was denied on December 2, 1993, he called in sick. He provided a doctor’s note that indicated he suffered from “Cephalalgia” (a headache) and could not return to work until December 17, 1993. He also filed a complaint with the EEOC in December 1993, claiming that his reprimand was the result of racial discrimination under Title VII.

He continued to call in sick and provided doctor’s notes to cover the periods from December 2, 1993 to February 2, 1994, and then from February 2, 1994 to March 2, 1994.

The city had a policy that allowed the department head to require medical certification before approving sick leave if they have reason to believe that sick leave is being abused. There was also a policy that allowed the department to require a fitness-for-duty examination by a physician at the city’s expense.

The fire chief wrote Marlon and enclosed a medical certification form for his doctor to fill out. Marlon did not return the form. The chief directed Marlon to report to a physician for a fitness-for-duty exam. Marlon did not report for the exam.

The chief notified Marlon on March 16, 1994 that he was being terminated effective March 31, 1994, for insubordination in failing to substantiate his need for sick time and for unauthorized absence for failing to comply with sick leave policies. Marlon did not grieve the termination. He did file a second complaint with the EEOC, claiming that his termination was in retaliation for filing his first complaint.

Marlon then sued claiming that his termination was as a result of racial discrimination and in retaliation for his filing an EEOC complaint.

The court held that he had not shown that any other employees were treated differently in similar cases, nor had he shown that his firing was for any other reason than his failure to present the medical certification and his failure to attend the physical.

Point(s) to consider: Every agency should have policies in place to handle abuse of sick leave time. Consistent discipline helps prevent successful discrimination claims.

Spratley v. City of Hampton, 1997 U.S. App. LEXIS 26491 (4th Cir. Sep. 26, 1997).

14. Volunteer Firefighter – Terminated After Campaign of Complaints Against New Officer

Scott had been a volunteer firefighter since 1985. He lost an election for captain in December 1995. After the loss in December, he began writing numerous letters to the company and executive committee with concerns, worries and complaints as follows:

- On December 17, complaining that the new captain had made three errors
- On December 20, reporting department members who had lapsed CPR certifications and failed to take driver training
- On the same day, reporting that the new captain had made several errors on another emergency call
- On January 4, 1996, complaining about the rejection of his allegations made on December 17, and accusing the executive committee of sweeping the complaints under the rug
- On January 11, complaining about problems during a blizzard; the captain's attitude to his complaints; and the captain's favoritism
- On January 18, complaining that company members approached his goddaughter about department business; that he had confirmed with the "Volunteer Firemen's Association" that the captain was in error on the call he previously complained about; warning that there were potential consequences if safety issues were not addressed; complaining that he believed the rules were not being enforced fairly; inquiring whether it was true that the department was considering kicking him out of the company; and asking that they investigate whether training requirements were being met.

On January 18, Scott had a telephone conversation with the company president during which they agreed that certain action would be taken by the company and Scott agreed to first bring any future concerns to the president to give him an opportunity to resolve the problem before any other action was taken.

The letter writing continued:

- On March 10, he wrote the president to complain that members were riding apparatus illegally and without required certifications, asking that the captain be charged with violating the bylaws and that a written report on compliance be produced
- On March 11, he sent a copy of the letter to the executive committee

On March 15, the president suspended Scott for failing to abide by the terms of the January 19 letter (agreeing to bring all complaints to the president to give him an opportunity to resolve the complaint before Scott took further action). The executive committee confirmed a 90-day suspension. A vote of the entire company upheld the suspension.

During the suspension period the president learned that Scott falsified certain CPR class records. The executive committee voted to terminate him after a hearing.

Scott sued claiming that his suspension and termination were in violation of his First Amendment right to free speech. For the First Amendment to apply Scott had to first prove that the actions of the volunteer fire company were “state action” and not the actions of a private entity.

The court said that because the company carried out functions that were traditionally reserved to the state, they received substantial state assistance, were subject to substantial state regulation, and were considered state actors by the state (they had been previously held entitled to sovereign immunity), they were state actors. As state actors they could not violate any rights or privileges guaranteed by the Constitution.

For Scott’s speech to be protected under the Constitution, Scott had to prove that the speech related to matters of public interest, that his interest in speaking outweighed the fire company’s interest in the efficient operation of the workplace, and that his speech was a substantial factor in the company’s action against him.

The court found that the speech related to matters of public concern (public safety) even though some matters did not, and that his interest in speaking outweighed the company’s interest in maintaining an efficient operation. But, the court found that the reason for his suspension and termination was not his protected speech, but his violation of his agreement with the president and falsification of records.

Point(s) to consider: This Maryland case is very fact specific, but the court announced a “totality of the circumstances” test for determining whether or not a private organization is a “state actor.” Virginia courts may or may not reach the same conclusions, but they will use the same approach in analyzing the facts.

Goldstein v. Chestnut Ridge Volunteer Fire Company, Nos. 99-1080, 99-1089, slip op. (4th Cir. July 12, 2000).

Chapter 7 – Sample Forms/Policies

- Form 1 – Employee Incident Notice**
- Form 2 – Sample Employment Application**
- Form 3 – Sample Employment Verification Form**
- Form 4 – Sample Drug and Alcohol Policy**
- Form 5 – Sample Policy Manual Disclaimers**
- Form 6 – Sample Sexual and Other Harassment Policy**
- Form 7 – Sample Progressive Discipline Policy**
- Form 8 – Sample Technology Use Policy**
- Form 9 – City of Virginia Beach Department of EMS Disqualifiers**
- Form 10 – City of Virginia Beach Department of EMS Corrective Action and Procedure Policy**
- Form 11 – City of Virginia Beach Department of EMS Personnel Grievance Policy**
- Form 12 – Sample Grievance Policy**
- Form 13 – Virginia State Police Form SP-167**
- Form 14 – Virginia State Police Form SP-266**
- Form 15 – Virginia Department of Motor Vehicles Form 56**
- Form 16 – Virginia Department of Motor Vehicles Form 93**

Form 1
EMPLOYEE INCIDENT NOTICE

Employee Incident Notice

Employee Name:

Date of Incident:

Date of Notice:

Type of Violation

- ☐ Unacceptable behavior
- ☐ Violation of SOP/SOG
- ☐ Complaint from public
- ☐ Other:

Action taken:

- ☐ Warning
- ☐ Probation
- ☐ Suspension
- ☐ Termination

Nature of incident and evidence:

Improvement/Corrective Action to be taken by member:

Action to be taken if member fails to improve/take corrective action:

Date of review/date notice expires:

Additional Supervisor Comments:

Date(s) of prior actions:

Counseling:

Verbal Warning:

Supervisor's Signature

Employee Comments (optional):

I acknowledge the above notice has been discussed with me and I am aware of its consequences. My signature does not indicate either agreement or disagreement.

I acknowledge that if I fail to take action or make improvements, or if any other incidents occur I may be subject to further discipline, up to and including termination.

Employee's Signature

Date:

Form 2
SAMPLE EMPLOYMENT APPLICATION

APPLICATION FOR EMPLOYMENT

[Co. Logo]
[Co. Address]

[Company] is an equal opportunity employer and does not discriminate against otherwise qualified applicants on the basis of race, color, creed, religion, ancestry, age, sex, marital status, national origin, disability or handicap, or veteran status.

PERSONAL :

Name _____ Date _____
Last First Middle

Address _____
Number & Street City State Zip Code

Position Sought _____ Full Time Part Time

Date Available _____ Salary Desired _____ Phone Number _____

Social Security Number _____ Are you over 18 years old? Yes No

Are you legally eligible for employment in the United States? Yes No
(If offered employment, you will be required to provide documentation to verify eligibility.)

EDUCATION: Please indicate education or training which you believe qualifies you for the position you are seeking.

High School: No. of Yrs Completed (*circle one*) 1 2 3 4 **Diploma:** Yes No **G.E.D.:** Yes No

School(s) _____ City/State _____

College and/or Vocational School: Number of Years Completed (*circle one*) 1 2 3 4

School(s) _____ City/State _____

Major _____ Degrees Earned _____

Other Training or Degrees:

School(s) _____ City/State _____

Course _____ Degree or Certificate Earned _____

PROFESSIONAL LICENSE OR MEMBERSHIP:

Type of License(s) Held _____ State of Virginia License Number _____

License Expiration Date _____ Other Professional Memberships _____

(You need not disclose membership in professional organizations that may reveal information regarding race, color, creed, sex, religion, national origin, ancestry, age, disability, marital status, veteran status or any other protected status.)

This application for employment is good for 30 days only.
Consideration for employment after 30 days requires a new application.

NOTICE: These forms are provided with the understanding that they have legal implications but do not constitute legal advice. Because of the rapidly changing nature of the law, it is possible that one or more aspects of the forms will become outdated. It is the responsibility of users to ensure they receive current legal advice concerning use of the forms. Neither the author nor publisher of these forms shall be liable for any direct, indirect, or consequential damages resulting from their use. These forms were prepared by the law firm of Ray & Isler, P.C., 8245 Boone Blvd., Suite 402, Vienna, VA 22182, telephone 703-748-2690.

SKILLS:

Office: Data Entry/ _____ ☐ Excel or
Typewriter _____ wpm. ☐ Lotus 1,2,3 ☐ CRT ☐ Other:
WordProcessing ☐ WordPerfect ☐ MSWord Other _____
Other Software Skills _____

Have you ever been employed in any facility of [Company]? ☐ Yes ☐ No

If so, please state facility name and location and dates of employment _____

RECORD OF CONVICTION:

During the last ten years, have you ever been convicted of a crime other than minor traffic offense?

☐ Yes ☐ No

If yes, explain: _____

(A conviction will not necessarily automatically disqualify you for employment. Rather, such factors as age and date of conviction, seriousness and nature of the crime, and rehabilitation will be considered).

EMPLOYMENT: List last employer first, including U.S. Military Service.

May we contact your present employer? ☐ Yes ☐ No

If any employment was under a different name, indicate name _____

Employer _____ **Address** _____
Telephone _____ **Position** _____ **Dates of Employment:** From _____ To _____
Mo/Yr Mo/Yr
Salary _____ **Supervisor** _____ **Department** _____
Duties _____ **FT** ☐ **PT** ☐ **No. of Hrs.** ____
Reason for Leaving _____

Employer _____ **Address** _____
Telephone _____ **Position** _____ **Dates of Employment:** From _____ To _____
Mo/Yr Mo/Yr
Salary _____ **Supervisor** _____ **Department** _____
Duties _____ **FT** ☐ **PT** ☐ **No. of Hrs.** ____
Reason for Leaving _____

Employer _____ **Address** _____
Telephone _____ **Position** _____ **Dates of Employment:** From _____ To _____
Mo/Yr Mo/Yr
Salary _____ **Supervisor** _____ **Department** _____
Duties _____ **FT** ☐ **PT** ☐ **No. of Hrs.** ____
Reason for Leaving _____

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Employer _____ Address _____
Telephone _____ Position _____ Dates of Employment: From _____ To _____
Mo/Yr Mo/Yr
Salary _____ Supervisor _____ Department _____
Duties _____ FT ____ PT ____ No. of Hrs. ____
Reason for Leaving _____

If you wish to describe additional work experience, attach the above information for each position on a separate piece of paper.

Explain any gaps in work history: _____

Have you ever been discharged or asked to resign from a job? ____ Yes ____ No

If yes, explain: _____

REFERENCES

Professional

Name _____

Address _____

Phone (____) _____

Name _____

Address _____

Phone (____) _____

Personal

Name _____

Address _____

Phone (____) _____

Name _____

Address _____

Phone (____) _____

APPLICANT'S CERTIFICATION AND AGREEMENT

I hereby certify that the facts set forth in the above employment application are true and complete to the best of my knowledge and authorize [Company] to verify their accuracy and to obtain reference information on my work performance. I hereby release [Company] from any/all liability of whatever kind and nature which, at any time, could result from obtaining and having an employment decision based on such information.

I understand that, if employed, falsified statements of any kind or omissions of facts called for on this application shall be considered sufficient basis for dismissal.

I understand that should an employment offer be extended to me and accepted that I will fully adhere to the policies, rules and regulations of employment of the Employer. However, I further understand that neither the policies, rules, regulations of employment or anything said during the interview process shall be deemed to constitute the terms of an implied employment contract. I understand that any employment offered is for an indefinite duration and at will and that either I or the Employer may terminate my employment at any time with or without notice or cause.

Signature of Applicant _____

Date: _____

NOTICE: These forms are provided with the understanding that they have legal implications but do not constitute legal advice. Because of the rapidly changing nature of the law, it is possible that one or more aspects of the forms will become outdated. It is the responsibility of users to ensure they receive current legal advice concerning use of the forms. Neither the author nor publisher of these forms shall be liable for any direct, indirect, or consequential damages resulting from their use. These forms were prepared by the law firm of Ray & Isler, P.C., 8245 Boone Blvd., Suite 402, Vienna, VA 22182, telephone 703-748-2690.

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Form 3
SAMPLE EMPLOYMENT VERIFICATION FORM

EMPLOYMENT VERIFICATION

To Whom It May Concern:

The applicant named below is being considered for employment as _____ with our Company.

The applicant has listed you or your organization as a former place of employment. In accordance with the release signed by the applicant below, please provide the information requested and return this form to us in the enclosed self-addressed stamped envelope.

Very truly yours,

Name of Applicant _____

Soc. Sec. No.: _____

Name of Former Employer: _____

APPLICANT'S AUTHORIZATION

I hereby authorize the above individual, company, or institution to furnish [Company] with any information it may have concerning me which is on record or otherwise, and do hereby release the above individual, company, or institution and all individuals connected therewith, including [Company,] from any and all liability whatsoever that might otherwise be incurred in furnishing such information.

Signature of Applicant

RECORD OF EMPLOYMENT

Date(s) of Employment: _____

Position(s) Held: _____

Reason Employment Ended: _____

Please rate the Applicant in each of the following areas:

Job Skill	Excellent	Good	Average	Below Avg.	Poor
Initiative`	Excellent	Good	Average	Below Avg.	Poor
Attendance	Excellent	Good	Average	Below Avg.	Poor
Conduct	Excellent	Good	Average	Below Avg.	Poor

Would you rehire Applicant? Yes___ No

Signature

Title

Date

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Form 4
SAMPLE DRUG AND ALCOHOL POLICY

The Company maintains and strictly enforces a drug-and-alcohol-free workplace. The following activities are prohibited regardless of whether the employee is on or off duty:

1. The unlawful or unauthorized manufacture, distribution, dispensation, possession, sale, transfer or use of an illegal drug, e.g., a substance controlled under Section 202 of the Controlled Substances Act, 21 U.S.C. §812.

The following activities are prohibited while the employee is on duty or on Company-controlled premises:

2. Misuse of a legal drug; or
3. Possession (excluding an original sealed container in an employee vehicle parked in a parking lot) or use of alcohol; or
4. Reporting to work or working while under the influence of alcohol or drugs.

An employee legitimately using or under the influence of medication (legal drugs) during working hours must notify his/her supervisor of this prior to commencing work if the medication might impair his/her performance, judgment or coordination.

Compliance with the Company's Drug and Alcohol Policy is a condition of employment and all employees must notify the Company of any criminal drug statute conviction within five days of conviction if the conviction was for a violation that occurred in the workplace.

Any employee violating the Company's Drug and Alcohol Policy will be subject to discipline up to and including immediate termination and/or will be required to undergo a program of rehabilitation as determined by the Company to be appropriate under the circumstances.

The Company may search or test employees--(and all items in their possession or on Company-controlled premises)--to determine compliance with this policy: (1) based on a reasonable suspicion of violation; (2) in conjunction with other legitimate physical examinations or detection programs; (3) following work-related accidents; (4) as deemed necessary by the Program Coordinator to ensure a drug-and-alcohol-free workplace; (5) randomly, to detect the use of illegal drugs by employees in

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sensitive positions (e.g. national security, confidentiality, health or safety involved); (6) in follow-up to a rehabilitation program; or (7) as required by law, regulation or government contract.

Employees should consult with the Program Coordinator before a violation of this policy occurs if they feel a need for rehabilitation or counseling. Access to a program of rehabilitation is not necessarily a substitute for disciplinary action following a violation of this policy.

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Form 5
SAMPLE CONTRACT DISCLAIMER PROVISION

This [Manual/Handbook/Policy] is not a contract of employment and does not confer contractual rights, either express or implied, upon any employee, nor does it guarantee employment for any period of time. All employees are employed at-will and either the employee or the Company may terminate the employment relationship at any time, with or without cause, and with or without notice.

SAMPLE MERGER CLAUSE

This Manual supersedes all prior policies or procedures as to subjects addressed in the manual and all representations, oral or written, regarding an employee's employment status or duration of employment, except those signed in writing by the President of the Company. In the event of a contradiction between this Manual and the representation of a supervisor, the terms of this Manual will govern.

SAMPLE ACKNOWLEDGEMENT OF RECEIPT OF EMPLOYMENT MANUAL

I acknowledge that I have received a copy of the [ABC Company] Employment Manual. I understand that it is my responsibility to review the Manual and to familiarize myself with the policies and procedures contained in the Manual. I understand that the Manual is not a contract of employment and that I am employed at-will and either I or the Company may terminate my employment at any time, with or without cause, and with or without notice.

Signature of Employee

Date

Printed Name of Employee

SAMPLE RESERVATION OF RIGHTS CLAUSE

The policies and procedures contained in this Manual may be modified, amended, or cancelled by the Company at any time, and with or without notice.

SAMPLE EEO POLICY

[ABC Company] does not discriminate against employees or applicants for employment based upon race, color, religion, sex, national origin, age, or disability. The company will make any reasonable effort to ensure that all applicants and employees will receive equal opportunity in personnel matters, including recruiting, selection, training, placement, promotion, wages and benefits, transfers, terminations, and working conditions.

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Form 6
SAMPLE SEXUAL AND OTHER UNLAWFUL HARASSMENT POLICY

Harassment of applicants and employees on the basis of race, color, religion, sex, sexual orientation, national origin, age, marital status, or disability, including sexual harassment (all as defined and protected by applicable law) is unacceptable and will not be tolerated.

Sexual Harassment

Sexual harassment has been defined generally as including unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature, whenever: (1) submission to the conduct is either an explicit or implicit term or condition of employment; (2) an employee's reaction to the conduct is used as a basis for employment decisions affecting that employee; or (3) the conduct has the purpose or effect of interfering with the employee's work performance or creating an intimidating, hostile or offensive working environment.

No employee or applicant should be subjected to unsolicited and unwelcome sexual overtures, nor should any employee or applicant be led to believe that an employment opportunity or benefit will in any way depend upon "cooperation" of a sexual nature.

Sexual harassment is not limited to demands for sexual favors. It also may include such actions as: (1) sex-oriented verbal "kidding," "teasing" or jokes; (2) repeated offensive sexual flirtations, advances, or propositions; (3) continued or repeated verbal abuse of a sexual nature; (4) graphic or degrading comments about an individual or his or her appearance; (5) the display of sexually suggestive objects or pictures; (6) subtle pressure for sexual activity; and (7) inappropriate physical contact.

Sexual harassment does not refer to occasional compliments of a socially acceptable nature, or consensual personal and social relationships without a discriminatory employment effect. It refers to behavior that is not welcome and that is personally intimidating, hostile, or offensive.

Other Unlawful Harassment

Harassment on other grounds, including race, color, religion, national origin, age, marital status, or disability is also prohibited. Harassment includes jokes, verbal abuse and epithets, degrading comments, the display of offensive objects and pictures, and other conduct that the individual might reasonably find to be offensive.

Scope of Policy

This policy prohibiting harassment, whether sexual or of another nature, is not limited to relationships between and among employees and prospective employees, but also extends to interaction with clients or customers. No employee shall ever subject any client or prospective client of the company to sexual harassment of any nature, including that conduct described above.

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Furthermore, no employee will be required to suffer sexual harassment by any client, vendor, or supplier. Any unwelcome sexual overtures or other forms of sexual harassment advanced by a client, vendor, or supplier should be reported immediately to the Human Resources Director or the Executive Director.

Complaint Procedure

The Company encourages reporting of all incidents of sexual or other harassment, regardless of the identity of the offender. While the Company encourages individuals who believe they are being harassed to firmly and promptly notify the offender that his or her behavior is unwelcome, the Company also recognizes that power and status disparities between the offender and the recipient of the offensive conduct may make such a confrontation impossible. Consequently, such direct communication is not a requirement or prerequisite to filing a complaint.

Any employee who feels that he or she is or has been the victim of illegal discrimination or harassment in violation of this policy should immediately notify his or her supervisor or the Human Resources Director. The Company will fully investigate all complaints, and will maintain confidentiality to the extent possible given the Company's duty to investigate the complaint. Anyone who is found to have engaged in illegal discrimination or harassment will be subject to appropriate disciplinary action depending on the circumstances, including possibly termination of employment. No employee will be retaliated against for making a complaint or assisting with the investigation of a complaint.

The Company is strongly committed to maintaining a workplace free of impermissible harassment or intimidation, including sexual harassment. All complaints will be taken seriously. If you have questions, please speak to the Human Resources Hotline at 1-888-____-____.

Acknowledgment of Receipt

I have read the Company's policy prohibiting workplace harassment and I understand that I should not engage in sexual or other illegal harassment. I also am not expected to tolerate sexual harassment by others and I understand that I can make a complaint of any such conduct which will be fully and fairly investigated by the company.

Signature of Employee

Date

Printed Name of Employee

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SAMPLE PROGRESSIVE DISCIPLINE POLICY

Employee common sense is the best guide to proper conduct. However, sometimes action is necessary for the purpose of improving undesirable behavior and preventing a recurrence of that behavior. The following steps generally will be followed to ensure that company rules and policies will be enforced fairly and consistently. The company reserves the right to impose discipline not in accordance with this policy if it determines such direction is necessary.

Step 1 – Verbal Warning

The supervisor will discuss with the employee the problem which has occurred and the possibility of corrective action if the problem continues.

Step 2 – Written Warning

The supervisor will review the facts of the case with the employee and attempt to explain what was done wrong and what could have been done. The employee will be told that further corrective action will be considered if another violation occurs.

Step 3 – Suspension

The employee will be suspended for up to five (5) working days without pay. (For suspensions of less than a week, exempt employees will be required to utilize paid leave for the duration of the suspension). When immediate action is necessary, or when all of the facts are not available, the supervisor may suspend the employee's work and have the employee leave the area until a final decision is reached. If an investigation absolves the employee of blame, he or she will be paid in full for the time lost during suspension.

Step 4 – Discharge

The employee will be separated from the company.

The discharge of an employee for repeated minor violations generally should be preceded by verbal and written warnings and suspension. However, at management discretion, employees may be separated from the company without prior discipline. Nothing in this policy provides any contractual rights regarding employee discipline or counseling and this policy in no way shall be read as modifying the at-will employment relationship between the company and its employees.

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Form 8
SAMPLE TECHNOLOGY USEPOLICY

This statement sets forth the policy of ABC Company regarding the acceptable use of the Company's Internet services and its electronic mail (e-mail) system, including access to and disclosure of electronic mail messages sent or received by Company employees using the e-mail system. The Company reserves the right to modify this policy at any time.

The Company computer system, including Internet access and the e-mail system, are the property of the Company and should be used primarily for Company purposes. Though the Company understands that its employees may, on occasion, use its computer system, access the Internet, and send and receive e-mails for personal matters, employees should not maintain an expectation of privacy with respect to use of the computer system. All information accessed by and communications sent or received on the Company's computer system are subject to Company monitoring without further notice to employees. The Company maintains the right to monitor and view all Internet material and electronic communications accessed through its computer systems.

In general, employees should use the Company's information systems for Company business only. The e-mail system should not be used to solicit others for commercial ventures, religious or political causes, outside organizations, or other non-job-related promotions.

The e-mail and other information systems of the Company also are not to be used in a way that may be disruptive, offensive to others, or harmful to morale.

Specifically, the Company strictly prohibits any display or transmission of material that can be construed as creating a hostile work environment, including sexually explicit or obscene images, messages, or cartoons, or the transmission or use of e-mail communications that contain ethnic slurs, racial epithets, or anything that may be construed as harassment or disparagement of others based on their race, color, national origin, sex, age, disability, or religious or political beliefs. Violation of this policy will result in appropriate disciplinary action, up to and including termination.

Should an employee receive unsolicited prohibited material over the Company's computer system, the employee must refrain from disseminating such materials to other persons either within or outside the Company, and should inform the sending party that the receipt of such information violates the policies of the Company.

The e-mail system also shall not be used to send or receive copyrighted materials, trade secrets, proprietary financial information, or similar materials without proper authorization.

For privacy reasons, employees should not attempt to gain access to another employee's personal file of e-mail messages without the latter's express permission. However, as noted, employees should be aware that, with respect to the Company, they do not possess any privacy rights in messages sent or received on the electronic mail system.

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Form 9
CITY OF VIRGINIA BEACH DEPARTMENT OF EMERGENCY MEDICAL SERVICES
MEMBERSHIP DISQUALIFIERS

An applicant:

- must not be addicted to the use of any drugs or intoxicating substances,
- must have never been convicted of a felony involving a sexual crime,
- must not be convicted of any other act which is a felony under the laws of this State or of the United States, except that such felony is eligible for certification if within five (5) years after the date of final release no additional felonies have been committed;
- must not have been convicted of any felony or any crime involving moral turpitude (crimes contrary to justice, honesty or good morals);
- must not have been convicted of a Class 1 or Class 2 misdemeanor or the Virginia State law equivalent in the last 24 months;
- must not have been convicted of a Class 3 or Class 4 misdemeanor or the Virginia State law equivalent in the last twelve (12) months;
- must not have a minus six (-6) or more points on a Virginia Operators license or the equivalent for out of state license or the combination of such,
- must not have been convicted of driving under the influence of drugs or alcohol, refusal to take blood or breath test, eluding police, racing, reckless driving or any suspension of driving privileges in the last three (3) years,
- must not have used Cocaine, LSD, PCP, or any other type of hallucinogenic drug in the last five (5) years or any history of flashbacks or adverse reactions related to such use;
- must not have used illegal drugs including anabolic steroids in the last twelve (12) months;
- must not have a dishonorable discharge from any military service;
- must not be untruthful or intentionally withhold information on any application, interview or paperwork associated with the position,
- must not cheat on examination(s) or testing associated with the position.

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Form 10
CITY OF VIRGINIA BEACH DEPARTMENT OF EMERGENCY MEDICAL SERVICES
CORRECTIVE ACTION AND PROCEDURE POLICY

Purpose: To provide guidelines for effectively addressing a member's unsatisfactory work performance or misconduct in an effort to promote the maximum utilization of a member's potential.

Definitions: Administrative Leave - A non-disciplinary action which temporarily relieves a member from certain responsibilities pending the outcome of a review of an action involving the member.

Written Reprimand - Written documentation to the member from the supervisor wherein the member is advised and cautioned in reference to his or her unsatisfactory work performance or misconduct.

Suspension - Temporary prohibition of a member to perform his or her duties due to unsatisfactory work performance or misconduct.

Demotion - Reduction in rank of a member in conjunction with a change in job duties and responsibilities as a result of a member's unsatisfactory work performance or misconduct.

Dismissal - Involuntary separation from the organization initiated by the member's supervisor(s) based on a member's unsatisfactory work performance or misconduct.

Policy Statement:

All positions appointed by the Director including the heads of the divisions of EMS constitute the supervisors within the EMS Chain of Command.

Specifically, the following individuals are authorized to levy corrective action (listed in ascending order):

Assistant Squad Commander
Squad Commander
Brigade Commander
EMS Division Heads/Duty Administrator
Deputy Director
Director

In addition, the Duty Field Commander is authorized to place a member on administrative leave for infractions of Department policy or to ensure the safety of personnel.

All members shall be disciplined in a progressive manner. Based on varying circumstances, however, a supervisor may exercise discretion in determining the degree of discipline that should be imposed. A dismissal is generally considered appropriate only as a last resort or in the case of an extremely serious violation. The following list represents the forms of disciplinary action:

- Written Reprimand
- Suspension
- Demotion
- Dismissal

The Department of EMS does not consider verbal warnings, cautions, or oral counseling to be discipline. Further, the Department recommends the use of these methods prior to discipline when appropriate. A warning, a caution, or an oral counseling, if documented, should be maintained in a critical incident file or department file.

Unsatisfactory Work Performance or Misconduct:

Disciplinary action may be taken either when a member's work performance is unsatisfactory, or when the member has engaged in misconduct. Examples of unsatisfactory work performance and misconduct may include, but are not limited to, the following:

- Recurring unexcused tardiness
- Absence without leave
- Code of Ethics violation
- Substance Abuse Policy violation
- Serious neglect of work
- Refusal to comply with instructions of a supervisor
- Insubordination
- Deliberate or careless conduct endangering the safety of oneself or another member
- Negligence in the care and handling of City/Volunteer Rescue Squad property
- Theft of City/Volunteer Rescue Squad property or of another member's property
- Incompetence or inefficiency in the performance of required job duties
- Use of offensive, abusive, threatening, coercive, indecent or discourteous language toward supervisors, other members, or members of the public
- Intentional falsification of personnel records, time records, patient reports or any other City records or reports
- Provoking, instigating or participating in a fight while on duty or on City/Volunteer Rescue Squad property

- The carrying of any weapon during work hours or on City/Volunteer Rescue Squad property (excluding police officers)
- Violation of any City or departmental policy, procedure, guideline and/or regulation

Disciplinary Actions:

A MEMBER MUST BE ADVISED OF THE CHARGES AND GIVEN AN OPPORTUNITY TO RESPOND TO ALLEGATIONS PRIOR TO DISCIPLINARY ACTION BEING TAKEN.

ALL DISCIPLINARY ACTIONS MUST BE PLACED IN WRITING AND MUST BE SENT TO THE DEPARTMENT OF EMS VIA THE APPROPRIATE CHAIN OF COMMAND TO BE PLACED IN THE MEMBER'S OFFICIAL PERSONNEL FILE. DISCIPLINARY ACTIONS NOT SUBMITTED TO THE DEPARTMENT WILL NOT BE CONSIDERED AS AN OFFICIAL ACTION.

Written Reprimands:

Once a reprimand is reduced to writing, a copy shall be hand delivered to and signed by the member, or shall be sent by certified mail to the member, and must include the following:

- a. a statement that a written reprimand is imposed and the reasons for the written reprimand;
- b. a summary of member's response, if any;
- c. a statement that further disciplinary action may be taken for future problems with unsatisfactory performance or misconduct;
- d. a statement outlining what steps management has taken to assist the member, if applicable; and
- e. a statement of the member's rights under the Department's Grievance Procedure.

No reprimand shall be relied upon as a basis for further disciplinary action unless it is documented in writing and a copy is forwarded to the Department of EMS for inclusion in the official personnel file.

After eighteen months (18), without further disciplinary action having been taken, a written reprimand shall not be considered for the purpose of future disciplinary action and may be purged from the official personnel file with the written approval of a Department official. In order to preserve the audit trail, the written reprimand shall be placed in a confidential employee relations file located at EMS Administration.

Suspensions:

Supervisors have the authority to suspend a member for a period not to exceed thirty-one (31) consecutive calendar days. Suspensions for a period of thirty-two (32) consecutive calendar days or more must be approved by the Assistant for Support Services.

A written notice of a suspension shall be hand delivered to and signed by the member, or shall be sent certified mail to the member, and must include the following:

- a. a statement that a suspension is being imposed and the reason for the suspension;
- b. a summary of the member's response, if any;
- c. a statement that further disciplinary action may be taken for future problems with unsatisfactory performance or misconduct;
- d. a statement outlining what steps management has taken to assist the member, if applicable; and
- e. a statement of the member's rights under the Department's Grievance Procedure.

A copy of such written notice shall be forwarded to the Department of EMS for inclusion in the member's official personnel file.

After five (5) years, without further disciplinary action having been taken, a suspension shall not be considered for purposes of future disciplinary action and may be purged from the official personnel file based on the Director's approval. In order to preserve the audit trail, the letter of suspension shall be placed in a confidential employee relations file located at EMS Administration.

Demotions:

A written notice of the demotion shall be hand delivered to and signed by the member, or shall be sent by certified mail to the member, and must include the following:

- a. a statement that a demotion is imposed and the reasons for the demotion;
- b. a summary of the member's response, if any;
- c. a statement that further disciplinary action may be taken for future problems with unsatisfactory performance or misconduct;
- d. a statement outlining what steps management has taken to assist the member if applicable; and
- e. a statement of the member's rights under the Department's Grievance Procedure.

A copy of the written notice shall be forwarded to the Department of EMS for inclusion in the member's official personnel file.

Dismissals:

Management has the right to place a member on suspension pending an investigation prior to initiating a member's dismissal.

Prior to dismissal, the Department official authorized to terminate the member shall afford the member an opportunity to an informal meeting at which time he/she shall be informed of the reason(s) for the proposed dismissal and shall have the opportunity to answer or rebut the allegations. The member need not be allowed to have a personal representative present during this meeting. The Department official shall document the meeting. If after such meeting the official concludes that the member should be dismissed, or if the member declines to attend such a meeting or to make a statement, a written summary of the meeting and the member's response, or a statement that the member was offered a meeting and declined to appear and make a statement, shall be included in the member's letter of dismissal.

A written notice shall be hand-delivered to and signed by the member, or shall be sent by certified mail to the member, and must include the following:

- a. a statement that a dismissal has been imposed and the reasons for the dismissal;
- b. a summary of the member's response, if any;
- c. statement outlining what steps management has taken to assist the member, if applicable, and;
- d. a statement of the member's rights under the Department's Grievance Procedure.

A copy of such written notice shall be forwarded to the Department of EMS for inclusion in the member's official personnel file.

No individual shall be reinstated who has been dismissed twice from the Department of EMS within the previous five (5) consecutive calendar year period.

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Form 11
CITY OF VIRGINIA BEACH DEPARTMENT OF EMERGENCY MEDICAL SERVICES
PERSONNEL GRIEVANCE POLICY

PURPOSE:

To establish open communications between supervisors and members for the resolution of grievances arising from member concerns with their working environment. It is the objective of the grievance procedure to obtain a complete understanding of member concerns and to have them settled as soon as possible at the lowest possible supervisory level commensurate with a fair and equitable settlement. However, members should not hesitate to carry the concern to the highest level of management should the member feel this is justified. Concerns, even of a minor nature, should be resolved.

DEFINITION:

A “grievance” is defined as a complaint or dispute by a member relating to their affiliation, including, but not necessarily limited to the following:

- Disciplinary actions including but not limited to reprimands, demotions, suspensions, and dismissals provided that dismissals will be grievable whenever resulting from formal discipline or unsatisfactory job performance.
- Acts of retaliation as the result of utilization of the grievance procedure including reprisal as a result of participating in another member’s grievance.
- Complaints of discrimination on the basis of race, color, creed, political affiliation, age, disability, national origin or sex.
- Acts of retaliation because a member has complied with any law of the U.S., the Commonwealth, or the City, has reported any violation of such law to a governmental authority, or has pursued any change in law before the Congress of the U.S. or the General Assembly.

Complaints are not grievable under this policy where they involve:

- Establishment and revision of position classifications or general benefits.
- Work activity accepted by a member as a condition of employment or work activity which may be reasonably expected to be a part of job content.
- The contents of City ordinances, statutes or established City policies, procedures or Department of EMS approved rules and regulations, policies, or guidelines.
- Failure to promote, except when a member can show that established promotional policies or procedures were not followed or applied fairly.

- The methods, means and personnel by which work activities are to be performed.
 - The selection, promotion, transfer, assignment and retention of a member within the Department.
 - The relief of members from their duties in the case of an emergency.
 - Management's rights as outlined later in this policy.

If there is a question of grievability, either the grievant or management must contact the Employee Relations Coordinator with the Department of Human Resources immediately in writing to request a determination of grievability.

ELIGIBILITY TO UTILIZE GRIEVANCE PROCEDURE:

All members will be eligible to utilize all phases of the grievance procedure set forth herein. All members are eligible to utilize such procedure only up to and including step 4 (Chief of Operations). All members subjected to an interrogation which could lead to dismissal, demotion or suspension for punitive reasons will be governed by the Firefighter's and Emergency Medical Technician's Procedural Guarantees set forth in sections 2.1-116.9:1 through 2.1-116.9:5 of the Code of Virginia.

TIME LIMITS:

The various consecutive calendar day periods referred to throughout this policy will include all leave days, holidays, and unauthorized absence time, as well as normal work days and weekend days for all members.

GRIEVANCE PROCEDURE

- Step 1. The aggrieved member (grievant) will discuss the grievance with the immediate supervisor in person within twenty (20) consecutive calendar days from the date of its occurrence or knowledge of its occurrence. The immediate supervisor must verbally reply to the grievant within ten (10) consecutive calendar days of the date of this discussion.
- Step 2. If the grievance is not settled in step 1, the grievant may, within ten (10) consecutive calendar days of the immediate supervisor's verbal reply, submit the grievance in writing to the same supervisor. The immediate supervisor must reply in writing to the grievant within ten (10) consecutive calendar days of receipt of the written grievance.
- Step 3. If the grievance is not settled in step 2, the grievant may appeal the immediate supervisor's decision to the next EMS officer in the chain of command (see corrective action policy). If the grievance reaches the Director of EMS, he or his designee must meet with the grievant to discuss the grievance, and must reply in writing to the grievant within ten (10) consecutive calendar days of the receipt of the written grievance.

- Step 4. If the grievance is not settled in step 3, the grievant may appeal the decision to the Chief of Operations within ten (10) consecutive calendar days of the Director's response. The Chief of Operations, or his designee, will meet with the grievant and the EMS Director, together or separately, to discuss the grievance and must respond in writing to the grievant within fourteen (14) consecutive calendar days of the receipt of the written grievance.

LEGAL REPRESENTATION:

The grievant may, at any step beyond the second step of the grievance procedure, be accompanied or represented by an individual of his choice who may be legal counsel. Representation of the grievant will be at the expense of the grievant. Management may not elect to be represented by legal counsel at any step of the procedure unless the employee also has legal representation. The grievant must notify management that the member is bringing legal counsel at least 72 hours in advance. The City Attorney or a designated alternate attorney may serve management at any step beyond the second step in the grievance procedure provided the employee is also represented by counsel.

FAILURE TO MEET TIME LIMITS:

Should there be extenuating circumstances, the Director of EMS may alter the time limits as set forth herein. After the initial filing of a written grievance, failure of either party to comply with all substantial procedural requirements of the grievance procedure without just cause will result in a decision in favor of the other party on any grievable issue, provided the party not in compliance fails to correct the non-compliance within five (5) consecutive working days of receipt of written notification by the other party of the compliance violation.

WAIVING STEPS IN THE GRIEVANCE PROCEDURE:

The waiving of steps within the grievance procedure is prohibited.

FREEDOM FROM REPRISAL:

A member filing a grievance or participating in another member's grievance will have the right to follow all the steps of the grievance procedure with complete freedom from reprisal.

MANAGEMENT RIGHTS:

Nothing in this policy is intended to circumscribe or modify the existing management rights to do the following:

- Direct the work of its members.
- Select, promote, transfer, assign, and retain members' positions within the agency provided such action is not taken for disciplinary purposes.
- Maintain the efficiency of departmental operations.
- Take actions as may be necessary to carry out the duties of the department in emergencies.
- Determine the methods, means and personnel by which operations are to be performed.

(Reproduced with permission of City of Virginia Beach Department of EMS)

Form 12

SAMPLE GRIEVANCE PROCEDURE

Should an employee wish to appeal any disciplinary action, the grievance procedure is available to him or her. An employee will not be considered a grievant unless the procedure is followed as described below:

This grievance procedure is intended to provide an effective and acceptable means for employees to bring problems and complaints concerning their well-being at work to the attention of their supervisors.

A grievance is defined as a complaint or dispute, as pertaining to their specific job classification, of an employee or group of employees regarding working conditions, or the interpretation or application of policies which he or she feels are unjust, inequitable, a hindrance to effective operations, or which create a problem, and which the employee believes the company ought to remedy. A matter which requires a change of policy, as opposed to a challenge to the application of a policy, is not a grievance.

In order for a complaint to be considered a grievance under this policy, the following procedures must be carried out precisely as stated below:

Step One:

An employee who has a grievance shall discuss the problem directly with his/her immediate supervisor within ten calendar days after the occurrence which prompts the grievance. The supervisor shall give serious attention to the grievance, and must give the employee an answer within three working days. There must be written documentation that this process took place (signed by both parties).

If the reply of the immediate supervisor does not resolve the grievance, and there is another supervisory level below the Executive Director, the employee shall talk to his/her supervisor's superior about the matter within two work days. If the answer at this level does not clear up the dispute, or if there is no reply within three work days, the employee may follow step two: (There should also be written documentation of any action taken at this level.)

Step Two:

The grievant shall send a written statement of the grievance to the Executive Director within five calendar days after the completion of Step One. This statement must include the condition or practice which is grieved, the attempts that have been made to resolve the issue and what solution is asked. Any or all parties who were involved in Step One may be invited by the Executive Director to discuss the facts. The grievant may invite an individual of his/her choice to participate as an advisor or representative. A written reply by the Executive Director shall be given to the grievant within three work days.

Step Three:

If the response of the Executive Director does not resolve the grievance, the grievant may request in writing that the Board of Directors review the situation. This request will be sent to the Board President within five days of completion of Step Two. The Executive Director shall provide the Board President with a written statement of the facts and the action taken to date.

The Board President, at his or her discretion, may either refer the matter to the Personnel Committee for investigation and recommendation or send it directly to the Board for action.

The Board of Directors shall issue a final decision at the second Board meeting following the filing of the grievance with the Board President.

The grievant and an additional individual of his or her choice will have the right to present their side of the situation at the Board meeting.

Non-grievable Complaints

Complaints are non-grievable where they involve:

- 1) Establishment and revision of wages or salaries, position classifications or general benefits.
- 2) Work activity accepted by the employee as a condition of employment or work activity which may be reasonably expected to be a part of the job content.
- 3) The contents of established promotional policies, procedures, rules and regulations.
- 4) Failure to promote except where the employee can show established promotional policies or procedures were not followed or applied fairly.
- 5) The methods, means and personnel by which such work activities are to be carried out.
- 6) Discharge, layoff or suspension from duties because of lack of work, reduction in the work force, or job abolition.
- 7) Non-punitive demotion.

Form 13
Virginia State Police Form SP-24

SP-24 01-01-01

**National Criminal Background Check For Employees or Volunteers
Providing Care to Children, the Elderly and Disabled**

Instructions to the Applicant/Volunteer and Business/Organization: Applicant must provide name, address and date of birth and must declare his or her criminal record information and sign in Section I. Two Applicant fingerprint cards (FD-258) must be completed and attached to this form. Business/Organization must complete all information in Section II. Record payment information in Section III. Once completed, mail this form, the two Applicant fingerprint cards and payment to: Virginia State Police, Central Criminal Records Exchange, P.O. Box 27472, Richmond, VA 23261-7472.

I. To Be Completed By Applicant/Volunteer

APPLICANT OR VOLUNTEER – PLEASE READ THOROUGHLY				
<small>The entity named as recorded below is entitled by Section 19.2-392.02 of the Code of Virginia to: 1) obtain a copy of any criminal history record I may have, 2) obtain a prompt determination as to the validity of criminal record(s) I may have before a final employment determination is made and 3) prior to the completion of the criminal record search(es) the qualified entity may choose to deny me unsupervised access to children, the elderly or disabled for which the entity provides care.</small>				
Applicant/Volunteer Last Name	First Name	Middle Name	Date of Birth (mm/dd/ccyy)	
Address		City	State	Zip Code
APPLICANT/VOLUNTEER CRIMINAL RECORD INFORMATION (check one; print clearly)				
<input type="checkbox"/> I HAVE BEEN convicted of, or under pending charge(s) or indictment(s) for the following crimes either within or outside the Commonwealth of Virginia. List all charges; use an additional form if necessary.				
1) Charge _____ Date _____ Jurisdiction (county & state) _____ Disposition _____				
<input type="checkbox"/> Felony or <input type="checkbox"/> Misdemeanor				
2) Charge _____ Date _____ Jurisdiction (county & state) _____ Disposition _____				
<input type="checkbox"/> Felony or <input type="checkbox"/> Misdemeanor				
<input type="checkbox"/> I HAVE NOT BEEN convicted of, or under pending charge(s) or indictment(s) for any crimes either within or outside the Commonwealth of Virginia.				
APPLICANT/VOLUNTEER DISCLOSURE				
<small>By virtue of my signature I certify the name, address, personal descriptive information and criminal record disclosure is accurate as recorded on this document and the fingerprint impressions belong to me. I am apprised of the right to obtain and/or challenge the accuracy/completeness of the information contained in a criminal history record and may initiate a challenge by following the directions recorded on the reverse side of this form.</small>				
Signature of Applicant/Volunteer			Date	

II. To Be Completed By Qualified Business or Organization

REQUEST FOR FINGERPRINT SERVICES		
<small>I hereby submit this written request for the fingerprints attached to be searched through the CCRE and the Federal Bureau of Investigation to assist in determining suitability for employment/volunteering services in the care of children, the elderly or disabled. As recorded in the section below. I represent a qualified entity entitled to receive fingerprint-based searches pursuant to Section 19.2-392.02 of the Code of Virginia.</small>		
Entity Name _____ Street Address _____ City _____ State _____ Zip Code _____	This request is for (check one): <input type="checkbox"/> Employment <input type="checkbox"/> Volunteer <i>This form should be duplicated for your records.</i>	
Date of Request	Signature of Authorized Agent	Printed Name

III. Payment Options

<small>(Check one payment choice – personal checks not accepted.)</small>		Search Fees: Employment - \$37.00 Volunteer - \$26.00	
<input type="checkbox"/> MasterCard	<input type="checkbox"/> Visa		
<small>If using a credit card, provide the following:</small>		Account Name	Expiration Date
		Account Number	
<input type="checkbox"/> Certified Check/MoneyOrder/Business Check payable to Virginia State Police			
*Authorized Agent Signature			*Date

Notice to Applicant/Volunteer

Directions for Challenging a Criminal History Record

In the event you are determined not qualified to work or volunteer in a position that involves access to children, the elderly or disabled you may initiate a personal review of a criminal record. Please remember: you were fingerprinted for the position and the Central Criminal Records Exchange (CCRE) of the Department of State Police has determined the fingerprints are identical to criminal fingerprints on file at CCRE and/or the Federal Bureau of Investigation (FBI) and a conviction exists which is a barrier to employment or volunteering services. To initiate a review of a criminal record, follow these instructions:

CCRE -Criminal Record within the Commonwealth of Virginia

Report to State Police Administrative Headquarters between the hours of 8:00 am and 5:00 pm at 7700 Midlothian Turnpike, Richmond, Virginia and inform the receptionist you desire to challenge a criminal record. You must provide two forms of identification, one of which must contain a photograph. Your fingerprints will be obtained and searched against the criminal record fingerprint database and the criminal history record for the State of Virginia only will be reviewed with you. Should you have a discrepancy either at the charge or final disposition level you must address it with the contributor of the record or the court or arresting agency that submitted the record to CCRE. CCRE staff will provide the necessary guidance and information to establish contact with a contributing agency.




FBI -Criminal Record outside the Commonwealth of Virginia Telephone the FBI, Special Correspondence Unit at (304) 625-3878 for instructions.

Form 14

Virginia State Police Form SP-167

CRIMINAL HISTORY RECORD REQUEST

Pay By: Certified Check/Money Order or Company Check Payable to "VIRGINIA STATE POLICE"
Personal Checks Not Accepted

MAIL REQUEST TO VIRGINIA STATE POLICE CCRE P.O. BOX 85076 RICHMOND, VIRGINIA 23261-5076		<input type="checkbox"/> \$15 CRIMINAL HISTORY RECORD <input type="checkbox"/> \$20 COMBINATION CRIMINAL HISTORY/ SEX OFFENDER SEARCHES		*NONPROFIT ORGANIZATION OR VOLUNTEER SERVICES															
CHECK REQUEST TYPE: <input type="checkbox"/> VISA (INTERNATIONAL TRAVEL) <input type="checkbox"/> CHARGE <input type="checkbox"/> PAID		<input type="checkbox"/> \$8.00 Criminal History <input type="checkbox"/> \$16.00 Combination Criminal History & Sex Offender Searches																	
<small>*To be entitled to reduce price, services must be on volunteer basis for a non-profit organization with a federal tax exempt number. Attach documentation to form which supports volunteering status and include organization's name, address and tax exempt identification number.</small>																			
Section 1. NAME INFORMATION TO BE SEARCHED																			
LAST NAME - <u>PRINT ONLY</u>		FIRST	MIDDLE	MAIDEN	SEX	RACE	DATE OF BIRTH / /												
PLACE OF BIRTH - County or City		PLACE OF BIRTH - State or Country			SOCIAL SECURITY NUMBER / /														
Section 1.A. AFFIDAVIT FOR RELEASE OF INFORMATION																			
I hereby give consent and authorize the Virginia State Police to search the files of the Central Criminal Records Exchange for any criminal history record and report the results of such search to the agent or individual authorized in this document to receive same.																			
_____ Signature of Person																			
State of _____; County/City of _____; to wit: Subscribed and sworn to before me this _____ day of _____, 20____. My commission expires _____, 20____																			
_____ Signature of Notary Public																			
Section 2. AGENCY, INDIVIDUAL OR AUTHORIZED AGENT MAKING REQUEST																			
MAIL REPLY TO: Agency, Individual or Authorized Agent <table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td colspan="4">NAME</td></tr> <tr><td colspan="4">STREET/RFD</td></tr> <tr> <td>CITY</td> <td>STATE</td> <td colspan="2">ZIP CODE</td> </tr> </table>				NAME				STREET/RFD				CITY	STATE	ZIP CODE		Circle Account Type and Record Requested Information: <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="text-align: center;">  MasterCard </div> <div style="text-align: center;">  Visa </div> <div style="text-align: center;">  American Express </div> </div> Account Number _____ Expiration Date _____ Signature of _____ Cardholder _____ State Police Account Number _____			
NAME																			
STREET/RFD																			
CITY	STATE	ZIP CODE																	
SECTION 2.A. As provided in Section 19.2-389, <u>Code of Virginia</u> , I hereby request the criminal history record of the individual named in Section 1 and swear or affirm I have the consent of the individual to obtain their record and will not further disseminate the information received, except as provided by law.																			
_____ Signature of Person Making Request																			
State of _____; County/City of _____; to wit: Subscribed and sworn to before me this _____ day of _____, 20____. My commission expires _____, 20____																			
_____ Signature of Notary Public																			
<input type="checkbox"/> Note if additional copy of record is requested and include \$5.00 fee for service.																			
NOTICE																			

Response based on comparison of name information submitted in request against a master name index maintained in the Central Criminal Records Exchange only.

☐ No Conviction Data - Does Not Preclude the Existence of an Arrest Record. ☐ No Criminal Record - Name Search Only
☐ No Criminal Record - Fingerprint Search

Department of State Police, Central Criminal Records Exchange
Date _____ By CCRE/ _____

CRIMINAL HISTORY RECORD NAME SEARCH REQUEST

INSTRUCTIONS FOR COMPLETING THE CRIMINAL HISTORY REQUEST FORM

Separate These Instructions at Preforation and Align with Request Form to Assist in Completion

Pay By: Certified Check/Money Order or Company Check Payable to "Virginia State Police"

Personal Checks Not Accepted

Discard these Instructions Prior to Submitting Request to State Police

Refer to Reverse Side of this Form for Pricing Structure and Types of Name Searches Available

If you are interested in obtaining a name search of the "Sex Offender and Crimes Against Minors Registry", refer to the instructions on the reverse side of this form.

Type or Print Clearly and Complete the Criminal History
Record Request by Following these Instructions:

Check the appropriate box at the top of form to identify search(es) requested and payment method.

SECTION 1. Name, address, sex, race, date/ place of birth and social security number on whom the criminal record name search is to be conducted.

SECTION 1A. Individual's signature on which the search is to be conducted. The signature must be notarized to provide consent for the search to be conducted and to mail the processed search to an individual or authorized agent (if applicable).

SECTION 2. Name and complete mailing address of the individual, agency or authorized agent to receive the processed criminal record search form **must be completed on all request.**

NOTE: If the "MAIL REPLY TO" area is to be returned to the same individual on whom the search is conducted, Section 2A DOES NOT REQUIRE COMPLETION.

SECTION 2A. Affidavit must be signed by individual/authorized agent to receive the search results and the signature must be notarized. **NOTE:** If the "MAIL REPLY TO" area contains the same name as the individual on whom the search is conducted, Sections 2 and 2A DO NOT REQUIRE completion.

Paid Requests

Include a business check or money order for the total number of searches submitted.

Charge Account

Record the accurate Master Card, Visa, or American Express charge account number, circle type of charge transaction and the charge account expiration date. **DO NOT FORGET** signature to authorize the charge transaction.

State Police Account

If an account number has been assigned by the Department of State Police be certain to record it on all request forms submitted.

Forward the complete S.P. 167 "Criminal History Record Request" form to:

Virginia State Police
CCRE
P.O. Box 85076
Richmond, Virginia 23261-5076

To obtain additional forms, visit our web-site at <http://www.vsp.state.va.us/> or phone (804) 674-2024.



Form 15
Virginia State Police Form SP-230

SP-230 (Rev. 7-1-99)

**NAME SEARCH REQUEST FORM FOR
CRIMINAL HISTORY RECORD AND/OR
SEX OFFENDER AND CRIMES AGAINST MINORS REGISTRY SEARCH**

PLEASE FOLLOW INSTRUCTIONS ON REVERSE SIDE OF FORM TO ENSURE REQUEST CAN BE PROCESSED
PERSONAL CHECKS NOT ACCEPTED

I. CHECK METHOD OF PAYMENT

☐ State Police Charge Account # _____ ☐ MasterCard  Account Number: _____
☐ Paid \$ _____ Total Enclosed ☐ Visa  Expiration Date: _____
Signature of Cardholder: _____

II. Select type name search(es) requested:

Criminal History Record	<input type="checkbox"/> \$15.00	<input type="checkbox"/> \$8.00	*NONPROFIT
Sex Offender & Crimes Against Minors Registry	<input type="checkbox"/> \$15.00	<input type="checkbox"/> \$8.00	ORGANIZATION/
Criminal History Record and Sex Offender & Crimes Against Minors Registry	<input type="checkbox"/> \$20.00	<input type="checkbox"/> \$16.00	VOLUNTEER

*To be entitled to reduced price, services must be on volunteer basis for a non-profit organization with a federal tax exempt number. Attach documentation to form which supports volunteering status and include organization's name, address and tax exempt identification number.

III. Print Clearly Name to be Searched:

Last Name	First	Middle	Maiden	Sex	Race	Date of Birth (mm/dd/yyyy)
						/ /
Complete Address						Social Security Number
						/ /
City		State		Zip code		

I certify I am entitled by law to receive the requested record, and the record provided shall be used only for the screening of current or prospective employees or volunteers. I understand that further dissemination of Criminal History Records or their use for purposes not authorized by law is prohibited and constitutes a violation punishable as a class 1 or 2 misdemeanor.

IV. Agency, Individual or Agent Making Request:

Complete only for Criminal History Search

MAIL REPLY TO:

NAME		
STREET/RFD		
CITY	STATE	ZIP CODE

V. Purpose of Search

☐ Child Day Care
☐ Adult Day Care or Adult Care Residence
☐ Nursing Home or Home Health
☐ Foster Care
☐ Domestic Adoption
☐ International Adoption
☐ Other (Specify) _____

Date of Request	Signature of Person Making Request	Printed Name
-----------------	------------------------------------	--------------

VI. Complete for Sex Offender & Crimes Against Minors Registry Search (See instructions for explanation)

Check appropriate block to describe the purpose for the Sex Offender & Crimes Against Minors Registry Search:

<input type="checkbox"/> Employment	<input type="checkbox"/> Child or Adult Care	<input type="checkbox"/> Volunteer Services	<input type="checkbox"/> Child Protection
<input type="checkbox"/> Public Protection	<input type="checkbox"/> Child Minding	<input type="checkbox"/> Day Care	

(DO NOT WRITE IN THIS SPACE, CCRE USE ONLY)

RESPONSE(S) BASED ON COMPARISON OF REQUESTER FURNISHED INFORMATION AGAINST A MASTER ADULT NAME INDEX FILE
MAINTAINED IN THE CENTRAL CRIMINAL RECORDS EXCHANGE ONLY.

RESULTS OF NAME SEARCH

*NO CONVICTION DATA ☐ NO CRIMINAL RECORD ☐ *NO SEX OFFENDER REGISTRATION ☐

*DOES NOT PRECLUDE THE EXISTENCE OF RECORD EXISTING UNDER DIFFERENT NAME DATA THAN FURNISHED BY THE REQUESTER.

Date: _____ By: CCRE/ _____

Instructions for completing the Criminal History Record/Sex Offender and Crimes Against Minors Registry Request Form
Please read the following General Instructions

- Section I: Method of Payment: Certified Check, Money Order, Company/Business check, Mastercard or Visa.
For charge account: Record charge account number issued by State Police.
- Section II: Check type of name search(es) requested.
- Section III: Type or print CLEARLY the full name (last, first, middle [no initials] and maiden if applicable), sex, race, date of birth, and complete address of person whose name is to be searched against the master criminal name file and/or the Sex Offender and Crimes Against Minors Registry.
- Section IV: Agency, Individual or Authorized Agent Making Request: Your agency identification serves as the mailing label for the State Police to return the search results, therefore, type or print CLEARLY. This information is also reviewed to ensure requestor is statutorily entitled to use this form to request a criminal record name search.
- Section V: Purpose of Search: Check the appropriate box to reflect the purpose of the search.
- Dissemination of criminal history records are processed in accordance with Section 19.2-389 of the Code governing the program for which the search is requested. For adult programs, criminal history record dissemination includes convictions of specific barrier crimes.
- Sections VI: Sex Offenders and Crimes Against Minors Registry Search
- Section 19.2-390.1(B) of the Code of Virginia requires the requester to provide a statement of the reason(s) for the request, therefore, please check the appropriate block. The results of this search will indicate if an individual is registered for conviction(s) listed below, including substantially similar out-of-state conviction as a nonresident of the Commonwealth enrolled in school, employed and/or a vocation.

1. Sexually Violent Offenses

Abduction for immoral purposes	18.2-48(ii)
Rape	18.2-61
Forcible Sodomy	18.2-67.1
Object Sexual Penetration	18.2-67.2
Aggravated Sexual Battery	18.2-67.3
Attempt rape, forcible sodomy, object sexual penetration	18.2-67.5A

2. *Sexual Offenses

Abduction	18.2-47(A) **
Abduction of any child under 16 for purposes of concubinage or prostitution	18.2-48(iii)
Carnal knowledge of child between 13-15	18.2-63
Carnal knowledge of certain minors	18.2-64.1
Marital Sexual Battery	18.2-67.2:1
Sexual Battery (3 or more convictions)	18.2-67.4
Aggravated Sexual Battery	18.2-67.5B
Attempt Aggravated Sexual Battery	18.2-67.5B
Attempt Sexual Battery (3 or more convictions)	18.2-67.5C
Entering dwelling house etc. with intent to rape	18.2-90
Crimes against nature	18.2-361.B**
Adultery & fornication by person forbidden to marry	18.2-366.B**
Taking indecent liberties with children	18.2-370
Taking indecent liberties with child by person in custodial or supervisory relationship	18.2-370.1
Production, publication, sale, possession with intent to distribute	18.2-374.1B1**
Chapter 117(18 U.S.C. 2421 et seq.) of Title 18 of The United States Code***	

*Note: Pursuant to 19.2-298.1 (para. 2) two convictions within a ten year period of any of the sexual offenses listed in VI.2, provided the individual has been at liberty between convictions, requires registration as a sexually violent offender.

**Conviction under this section gives rise to registration requirements ONLY IF the victim was a minor, physically helpless, or mentally incapacitated as defined in Section 18.2-67.10.

***Individuals, including juveniles convicted of interstate transportation of another individual(s) for the purpose of engaging in any sexual activity.

Mailing Instructions

Mail to:

**DEPARTMENT OF STATE POLICE
CENTRAL CRIMINAL RECORDS EXCHANGE
P. O. BOX 85076
RICHMOND, VIRGINIA 23261-5076**

ALLOW THIRTY DAYS FOR PROCESSING

Form 16

Virginia State Police Form SP-266

SP 266 (7-1-1999)

SEX OFFENDER & CRIMES AGAINST MINORS

***** NAME SEARCH REQUEST FORM *****

This form is utilized for requesting information from the "Sex Offender and Crimes Against Minors Registry" as maintained by the Central Criminal Records Exchange (CCRE).

Section 19.2-390.1 (B) of the Code of Virginia authorizes dissemination of the Sex Offender and Crimes Against Minors Registry information for screening of employees and volunteers, and protection of the public in general and children in particular. Paragraph C of this Section requires the requestor to provide a statement of the reason(s) for the request, therefore, please check the appropriate block. The results of this search will indicate if an individual is registered for conviction(s) of the following crimes, including substantially similar out-of-state conviction(s) if maintained in the Registry, pursuant to Section 19.2-298.1.

Sexually Violent Crimes	Sexual Crimes	Sexual Crimes (Con't.)
Abduction for immoral purposes (clause ii) Rape Forcible sodomy Object sexual penetration Aggravated sexual battery Attempted rape, forcible sodomy, inanimate object sexual penetration	Crimes against nature Adultery and fornication by persons forbidden to marry: incest Taking indecent liberties with children Taking indecent liberties with child by person in custodial or supervisory relationship Production, publication, sale, possession with intent, etc. Abduction Abduction for immoral purposes (clause iii),	Carnal knowledge of child between 13 and 15 Carnal knowledge of certain minors Marital sexual battery Attempted aggravated sexual battery Enter dwelling house, etc. with intent to rape Sexual battery (Third or subsequent conviction) Attempted sexual battery (Third or subsequent conviction) *Chapter 117 of Title 18 (18 US Code 2421 (et. seq.))

Unlawful use of the information for purposes of intimidating or harassing another is prohibited, and is punishable as a Class I Misdemeanor.

The purpose of the request is:

- ☐ Child Minding ☐ Daycare Services ☐ Employment
☐ Child or Adult Care ☐ Volunteer Services ☐ Child Protection ☐ Public Protection

The CCRE will conduct a name search of the Sex Offender and Crimes Against Minors Registry utilizing name data provided by the requestor.

Please type or print clearly all information noted below:

SHADED AREAS INDICATE THE MINIMUM INFORMATION TO BE FURNISHED BY REQUESTOR - Additional information should be provided if known.

Last Name		First	Middle	Race	Sex	Date of Birth	Social Security Number
Residence Address				City/Town		Zip Code	

SEARCH RESULTS WILL BE CHECKED AND RETURNED TO REQUESTOR AT ADDRESS RECORDED BELOW

- ☐ No Registration Record ☐ Registry Information Attached

State Police Use Only:

Response is based on a comparison of name/descriptive information only. This is not intended to preclude the existence of a registration under different name(s) and positive identification can only be established through a comparison of fingerprints.

Enter the name and complete mailing address to which the processed search request is to be returned:

_____ _____ _____ _____

A \$15/\$8* money order or company check must accompany this request before a file search will be initiated. *Personal Checks Not Accepted* Allow 30 days to receive a response. Mail completed request to:

Virginia State Police
P. O. Box 27472
Richmond, VA 23261-7472

- ☐ MasterCard ☐ Visa ☐ American Express Account Number: _____ Expiration Date: _____
 Signature of Cardholder: _____

*NONPROFIT ORGANIZATION/VOLUNTEER -To be entitled to reduced price of \$8.00, services must be on volunteer basis for a non-profit organization with a federal tax exempt number. Attach documentation to form which supports volunteering status and include organization's name, address and tax exempt identification number. ALL OTHER SEARCHES ARE \$15.00.

Instructions For Requesting a Search of the "Sex Offender and Crimes Against Minors Registry"

In accordance with Section 19.2-298.1 the Central Criminal Records Exchange of the Department of State Police is responsible for maintaining the above-captioned Registry containing name, personal descriptive/conviction information and photographs on individuals convicted of specific sex offenses. The law also provides for the dissemination of sex offender registrations for the following purposes: Child/adult care, child minding, public/child protection, daycare services, volunteering services or employment. To request an inquiry of the Registry, S.P. 266 "Sex Offender and Crimes Against Minors Registry" name search forms may be obtained by phoning (804) 674-2024 or downloaded from State Police's web-site on the Internet at <http://www.vsp.state.va.us/>.

There are two categories of sex offender registrations: sex offender and violent offender. A complete name search (each category of sex offender) of the Registry will be processed by submitting an S. P. 266 form OR a search of the violent sex offender registrations ONLY may be conducted through the Internet at the above web-site.

Cost Structure and Types of Record Searches Available *****

CRIMINAL HISTORY RECORD	\$15 per search of Criminal History Record Name File conducted from an S.P. 167 form.
COMBINATION CRIMINAL HISTORY/SEX OFFENDER REGISTRY	\$20.00 for a COMBINATION criminal history record name search conducted from an S.P. 167 "Criminal History Record Name Search" AND S.P. 266 "Sex Offender and Crimes Against Minors" name search. NOTE: the S.P. 167 and 266 must be submitted attached together to receive the reduced price.
COMPLETE SEX OFFENDER REGISTRY	\$15.00 per search of the Sex Offender Registry only through the submission of an S.P. 266 "Sex Offender and Crimes Against Minors" name search request form.
VIOLENT SEX OFFENDERS	No charge for searches conducted of violent offender registrations ONLY through the Internet.
NON-PROFIT ORGANIZATION COMBINATION CRIMINAL HISTORY/SEX OFFENDER REGISTRY	16.00 for a COMBINATION criminal history record search conducted from an S.P. 167 "Criminal History Record Name Search" form AND S.P. 266 "Sex Offender and Crimes Against Minors" name search IF the purpose of the search is for volunteering services for a non-profit organization. NOTE: the S.P. 167 and S.P. 266 must be submitted together attached to documentation explaining the purpose of the search is for volunteering services for a non-profit organization.
NON-PROFIT ORGANIZATION COMPLETE SEX OFFENDER	\$8.00 for each name search of the Sex Offender Registry conducted for individuals affiliated with a non-profit organization or volunteering their services for same. Documentation required that the individual represents a non-profit organization will be required to be attached to an S.P. 266 form as entitlement to the reduced cost. Include in the documentation the name of the organization, address and the tax-exempt identification number of the organization.

Form 17

Virginia Department of Motor Vehicles Form DL-56



DL 56 (Rev 02/98)

INDIVIDUAL REQUEST FOR NATIONAL DRIVER REGISTER FILE CHECK

The National Driver Register (NDR) is a national clearing house of driver license information. NDR contains information provided by State driver licensing officials on drivers whose licenses have been canceled, denied, revoked, or suspended or who have been convicted of certain serious traffic violations.

The following information is required by the NDR to conduct a search of the NDR file. You can submit your request by turning it into your local DMV branch office or by mailing it directly to NDR at the address listed on the reverse side of this form. If you mail the form to NDR, it must be signed in the presence of a notary public. **Requests may not be made under any circumstances by or on behalf of any individual other than the person on whom the information is being requested.** The response to your request will be mailed from the NDR to the address you furnish below.

REQUESTOR INFORMATION				
Please Type or Print Clearly				
FULL LEGAL NAME (First, Middle, Last)				
OTHER NAMES USED (Maiden, Prior Name, Nickname, Professional Name, Other)				
MAILING ADDRESS			HOME TELEPHONE (Optional)	
CITY, STATE, ZIP CODE			WORK TELEPHONE (Optional)	
DRIVER'S LICENSE NUMBER AND ISSUING STATE			SOCIAL SECURITY NUMBER (Optional)	
DATE OF BIRTH	SEX	COLOR OF EYES	HEIGHT	WEIGHT
DRIVER'S SIGNATURE				DATE ____/____/____ M M D D Y Y

NOTARIZATION	
Required <u>only</u> if the request form is mailed directly to NDR.	
____ appeared before me and executed this instrument (Requestor's Name)	Notary Public Seal or Stamp
This _____ day of _____ in the city/county of _____	
____ My commission expires _____ (Notary Public)	

DMV USE ONLY	
Proof of Identification Required if requestor submits request form to DMV. <input type="checkbox"/> Valid Out of State License Number _____ <input type="checkbox"/> Birth Certificate Number _____ <input type="checkbox"/> Military Discharge Papers ID Number _____ <input type="checkbox"/> Passport Number _____ <input type="checkbox"/> US Immigration Resident Alien Number _____ <input type="checkbox"/> Other _____ Two Documents Witnessed by _____	Remarks/Teller Stamp

The National Driver Register's files contain information furnished by the states. Any specific information about the driver history, or a request for the entire driver history, may be obtained only from the state(s) where the detailed information is recorded. The state(s) maintaining records are the only contacts able to correct records in error, and the NDR will correct its records when so advised by the state that reported the incorrect information

See Reverse Side

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HOW TO REQUEST AN NDR FILE CHECK

Any person may request an NDR file check on themselves and obtain a copy of the record if one exists. This form is used specifically for that purpose. Data requested on this form is by the authority of Public Law 97-364.96 Stat 1740, as amended (23 U.S.C. 401 note); delegation of authority at 49CFR 1.50.

Complete the front side of this form and submit it to your local DMV branch office or mail it directly to NDR. If you are mailing this form to NDR, have your signature notarized before mailing it to the address shown below. Any follow-up to your request should be directed to the NDR.

Your authorization is valid for only one search of the NDR. The NDR response will be mailed to the address you have provided; however, incomplete or illegible inquiries will not be processed. All inquiries will be acknowledged if a return address is readable. Forms mailed directly to NDR that have not been notarized will also not be processed.

WHAT TO EXPECT FROM YOUR NDR FILE CHECK

The NDR will respond to every valid inquiry, including requests which produce no record(s) on the NDR file. When records are located, the details will be returned to you and will contain all information listed in your NDR file. The reply will also indicate any reports to others that were previously provided by the NDR and will specify who has received the reports on you.

The name and address of the State driver licensing official will be provided for each State that reported information to the NDR.

LOCATION OF NDR

The address for requesting record information in writing or in person is shown below. NDR's regular working hours are 7:45 a.m. to 4:15 p.m. each day except Saturdays, Sundays, and Federal holidays.

National Driver Register Nassif Building
400 7th Street, S.W.
Washington, DC 20590

Form 18

Virginia Department of Motor Vehicles Form DL-93



INFORMATION REQUEST

DL93 (Rev. 07/95)

CIS USE ONLY

Fee
Add Fee

Please type or print clearly. Check one or more boxes to show the type(s) of information desired and provide all requested data.

REQUESTOR INFORMATION

Name: Last		First	Middle	Organizational Affiliation (if any)
Street Address				
City	State	Zip Code	Federal Tax ID or Social Security Number*	
Use Agreement Number (if applicable)			Access Code (if applicable)	
Reason for Request (Please be specific)				
<i>I understand that it is unlawful to use information provided by DMV for any purpose other than the one stated. I further certify that the information I have requested with this form will be used only for the stated purpose.</i>				
Requestor's Signature				Date

☐ SUBJECT'S PERSONAL INFORMATION (includes name and address)

Subject's Name Last		First	Middle
Address	City	State	Zip Code

☐ SUBJECT'S DRIVING INFORMATION (includes license history and conviction data)

Driver's License Number	OR	Date of Birth
Driver's Authorization (required for employers and others not authorized by Virginia code): <i>I authorize the Department of Motor Vehicles to furnish, for this one time only, information pertaining to my driving record to the requestor identified above.</i>		
Driver's Signature	Date	

☐ VEHICLE INFORMATION (includes vehicle description and registration data)

Vehicle Identification Number	Vehicle Make	Vehicle Year
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☐ ACCIDENT REPORT

Driver's Name	Driver's License Number	Date of Accident
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☐ OTHER INFORMATION (PLEASE BE SPECIFIC)

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DMV Customer Service Center Use ONLY

Proof of Requestor's Identification <input type="checkbox"/> Valid Driver's License Number _____ <input type="checkbox"/> Other Photo ID _____	Proof Of Requestor's Organizational Affiliation <input type="checkbox"/> Request on Organization's Letterhead Stationery <input type="checkbox"/> Business Card from Organization <input type="checkbox"/> Law Enforcement Badge Number _____ <input type="checkbox"/> Other _____
If Referred to Headquarters to Fill Request, Complete: Teller's Name _____ Customer Service Center Name (not #) _____	Remarks/Teller Stamp _____ <div style="text-align: right;">Fee Charged</div>

*Required by the State Comptroller for debt set-off collection purposes in accordance with Virginia Code §§2.1-196, 2.1-731, 2.1-734, et al.

Chapter 8 – Virginia Statutes

1. Firefighter's and Emergency Medical Technician's Procedural Guarantees

§ 2.1-116.9:1. Definitions

As used in this chapter unless the context requires a different meaning:

"Emergency medical technician" means any person who is employed solely within the fire department or public safety department of an employing agency as a full-time emergency medical technician whose primary responsibility is the provision of emergency care to the sick and injured, using either basic or advanced techniques. Emergency medical technicians may also provide fire protection services and assist in the enforcement of the fire prevention code.

"Employing agency" means any municipality of the Commonwealth or any political subdivision thereof, including authorities and special districts, which employs firefighters and emergency medical technicians.

"Firefighter" means any person who is employed solely within the fire department or public safety department of an employing agency as a full-time firefighter whose primary responsibility is the prevention and extinguishment of fires, the protection of life and property, and the enforcement of local and state fire prevention codes and laws pertaining to the prevention and control of fires.

"Interrogation" means any questioning of a formal nature as used in Chapter 10.1, Law-Enforcement Officer's Procedural Guarantees, § 2.1-116.2, that could lead to dismissal, demotion, or suspension for punitive reasons of a firefighter or emergency medical technician.

§ 2.1-116.9:2. Conduct of interrogation

The following provisions of this section shall apply whenever a firefighter or emergency medical technician is subjected to an interrogation which could lead to dismissal, demotion or suspension for punitive reasons:

1. The interrogation shall take place at the facility where the investigating officer is assigned, or at the facility which has jurisdiction over the place where the incident under investigation allegedly occurred, as designated by the investigating officer.

2. No firefighter or emergency medical technician shall be subjected to interrogation without first receiving written notice of sufficient detail of the investigation in order to reasonably apprise the firefighter or emergency medical technician of the nature of the investigation.

3. All interrogations shall be conducted at a reasonable time of day, preferably when the firefighter or emergency medical technician is on duty, unless the importance of the interrogation or investigation is of such a nature that immediate action is required.

4. The firefighter or emergency medical technician under investigation shall be informed of the name, rank, and unit or command of the officer in charge of the investigation, the interrogators, and all persons present during any interrogation.

5. Interrogation sessions shall be of reasonable duration and the firefighter or emergency medical technician shall be permitted reasonable periods for rest and personal necessities.

6. The firefighter or emergency medical technician being interrogated shall not be subjected to offensive language or offered any incentive as an inducement to answer any questions.

7. If a recording of any interrogation is made, and if a transcript of such interrogation is made, the firefighter or emergency medical technician under investigation shall be entitled to a copy without charge. Such record may be electronically recorded.

8. No firefighter or emergency medical technician shall be discharged, disciplined, demoted, denied promotion or seniority, or otherwise disciplined or discriminated against in regard to his employment, or be threatened with any such treatment as retaliation for or by reason solely of his exercise of any of the rights granted or protected by this chapter.

§ 2.1-116.9:3. Informal counseling not prohibited

Nothing in this chapter shall be construed to prohibit the informal counseling of a firefighter or emergency medical technician by a supervisor in reference to a minor infraction of policy or procedure which does not result in disciplinary action being taken against the firefighter or emergency medical technician.

§ 2.1-116.9:4. Rights nonexclusive

The rights of firefighters and emergency medical technicians as set forth in this chapter shall not be construed to diminish the rights and privileges of firefighters or emergency medical technicians that are guaranteed to all citizens by the Constitution and laws of the United States and the Commonwealth of Virginia or limit the granting of broader rights by other law, ordinance or rule.

This section shall not abridge or expand the rights of firefighters or emergency medical technicians to bring civil suits for injuries suffered in the course of their employment as recognized by the courts, nor is it designed to abrogate any common law or statutory limitation on the rights of recovery.

§ 2.1-116.9:5. Breach of procedures

Any breach of the procedures required by this chapter shall not exclude any evidence from being presented in any case against a firefighter or emergency medical

technician and shall not cause any charge to be dismissed unless the firefighter or emergency medical technician demonstrates that the breach prejudiced his case.

2. Disclosure of Employment-Related Information.

§ 8.01-46.1. Disclosure of employment-related information; presumptions; causes of action; definitions

A. Any employer who, upon request by a person's prospective or current employer, furnishes information about that person's professional conduct, reasons for separation or job performance, including, but not limited to, information contained in any written performance evaluations, shall be immune from civil liability for furnishing such information, provided that the employer is not acting in bad faith. An employer shall be presumed to be acting in good faith. The presumption of good faith shall be rebutted if it is shown by clear and convincing evidence that the employer disclosed such information with knowledge that it was false, or with reckless disregard for whether it is false or not, or with the intent to deliberately mislead.

B. In a civil action brought against an employer for disclosing the information described in subsection A, if the trier of fact determines the employer acted in bad faith, punitive damages may be awarded, as provided by § 8.01-38.1.

C. As used in this section, the following words and phrases shall have the following meanings:

"Employee" means any person, paid or unpaid, in the service of an employer.

"Employer" means any person, firm or corporation, including the Commonwealth of Virginia and its political subdivisions, and their agents, who has one or more employees or individuals performing services under any contract of hire or service, express or implied, oral or written.

"Information" includes, but is not limited to, facts, data and opinions.

"Job performance" includes, but is not limited to, ability, attendance, awards, demotions, duties, effort, evaluations, knowledge, skills, promotions, productivity and disciplinary actions.

"Professional conduct" includes, but is not limited to, the ethical standards which govern the employee's profession, or lawful conduct which is expected of the employee by the employer.

"Prospective employer" means any employer who is considering a person for employment.